

Subject: Call to Action!!! Defeat WRA's Proposed Designated Agency Legislation

Date: Tue, 05 Feb 2002 15:40:31 -0600

From: Jay Reifert <true-agents@true-agent.com>

Organization: Excel-Exclusive Buyer Agency

To: Oppose the WRA--Defeat Designated Agency <REAL_Defender1@true-agent.com>

[This open message to my fellow Wisconsin Realtors, is being sent to the thousands of technologically astute ones who have email. Further, it is being sent to the media, consumer activists, lobbyists and other parties who should have an interest in understanding and opposing this proposed legislation.]

Fellow Realtors,

VERY soon, the Wisconsin Realtors Association, WRA, will be introducing--via legislative proxy--a deceptive, fatally-flawed, anti-consumer, piece of legislation called Designated Agency.

Left to become law, this legislation will eventually cost our industry as ever more educated consumers begin peeling away the layers of deception to gaze upon the ugly, self-serving nonsense within.

You may think that this won't have any impact on you, but it will, if for no other reason than consumer-oriented Realtors like myself are going to keep working and educating consumers until the sham is fully exposed.

Designated Agency is a marketing ploy where the managing broker of a firm can appoint one agent in a transaction to represent a seller and another in the same transaction to represent a buyer, while magically causing any conflict of interest to simply disappear.

Truth is, nothing has changed, except that consumer buyers and sellers have yet again had something of value removed from them, just as they did when the WRA succeeded in passing the Agency "Reform" Act of 1994.

This time, it will be a further erosion of the accountability and other duties that FIRMS have to their clients. Designated Agency is supposed to have the consumer believe that a single firm is going to fight against itself to help clients with opposing interests each get the best deal.

Further, it ignores the reality that when one firm has the ability to exercise influence and--ostensibly--control over two parties in the same transaction, the firm has opportunity, in addition to motive, to engage in dealmaking, instead of watching out for each client's respective best interests, AS DEMANDED BY THE COMMON LAW OF AGENCY.

Fellow Realtors, it is time for us to stop talking out of both sides of our mouths. When it comes to public trust, we already rate way down at the bottom of the scale and allowing a sham concept like designated agency a place in our statutes is only going to further erode consumer confidence.

What needs to happen, is that the Mega-Brokers who control the WRA and have met behind closed doors to create and push this concept need to take a step back and realize that the common law of agency is what offers us the ability to stop pretending to be all things to all people, and gain some respect in the process.

These Mega-Brokers need to further recognize that there are often conflicts which are inherent, not only between the parties, but often between the interests of the firm and the parties and that only by returning to practicing in accordance with the highest standards of consumer protection--those that are found under the common law of agency--will we ever be deserving of the public's trust and confidence.

It would have been nice to have been allowed a seat on the committee that actually addressed Designated Agency when it was first being discussed, but, as the WRA has refused to allow myself or any other consumer activist Realtor a seat at the table, there is now no alternative but to take our case public.

Just as I have assembled your email addresses into my addressbook, I also have over three hundred fifty media contacts, the email address of every legislator and their staff, every registered lobbyist in Wisconsin, nearly a hundred local, state and national

consumer activist groups and am looking for help--from those of you willing--to spread the word even farther to other interested parties...not the least of which would be to consumers.

If you don't want to receive further messages from me, feel free to write me back with your name and email address and I will gladly remove you from this private list.

Otherwise, I will continue to send you periodic messages and will point you toward resources--some of which appear farther down this message--which will help you better understand Designated Agency, and why it is imperative that we stop this legislation.

(Before you opt for removal, you may want to consider that you are EXTREMELY unlikely to get the full story on Designated Agency from any other source.)

If you have questions or comments, feel free to contact me by return email. Those of you who respond with courtesy will be accorded courtesy in return. Those of you who respond with derision or scorn--if any--will not receive a response. (I don't have time to waste on people who've already chosen to embrace the deception.)

Here is a link you can use to find out who your legislators are and how to contact them:

<http://www.legis.state.wi.us/wamltest/>

Here are some links to gain a better understanding of Designated Agency. You will see, in some instances, references to Michigan. Though there may be minor differences in how states approach Designated Agency, the core deceptions are the same.

<http://www.ired.com/buymyself/agency/990930.htm>

<http://www.realdefenders.com/ray.htm>

<http://realdefenders.com/nader.htm>

<http://www.agencylaw.com/rounds.htm>

<http://www.realdefenders.com/nrecn.htm>

<http://realdefenders.com/tom.htm>

<http://www.realdefenders.com/erle.htm>

If you are truly interested in helping defeat this legislation, I would sincerely appreciate your printing out copies of any information which you feel may be helpful and distributing this to your officemates who may not be as email proficient as you are.

Thank you for your time and patience. Undoubtedly, you will be receiving an urgent counter-appeal from the Wisconsin Realtors Association sometime soon.

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Sincerely Yours,

Jay Reifert, Broker/Owner*****Excel-Exclusive Buyer Agency
100% Homebuyer Representation*****5136 E. Hilltop Road
100% Of The Time*****Madison, Wisconsin 53711
South Central Wisconsin's ONLY***** (800) 928-9379, Toll Free
Full-Time Exclusive Buyer Agency Firm.*** (608) 273-8841, Office
Visit <http://www.true-agent.com> ***** (608) 273-8388, Fax Machine
or <mailto:true-agents@true-agent.com>

Check out our NEW website, at: <http://www.Buy-Madison-Real-Estate.com>

Subject: Murder, Theft and the Wisconsin Realtors Association

Date: Tue, 05 Feb 2002 15:40:51 -0600

From: Jay Reifert <true-agents@true-agent.com>

Organization: Excel-Exclusive Buyer Agency

To: Oppose the WRA--Defeat Designated Agency <REAL_Defender1@true-agent.com>

[This message is going out to thousands of Wisconsin Realtors, almost 500 governmental officials--including all State Legislators and their respective staffs, the Governor of Wisconsin, most candidates for Governor of Wisconsin, the Attorney General of Wisconsin, over 425 Consumer Advocacy Groups and/or individual Consumer Advocates, over 285 Registered Wisconsin Lobbyists and over 190 Media Outlets and more and more consumers every day. (Note: In the last message, I mistakenly overreported the number of media outlets on this list and underreported the number of consumer advocates. The numbers in this message are accurate and I regret the error in the last message.)]

Murder, Theft and the Wisconsin Realtors Association

Hard to envision how all of these things fit together? Be patient and open-minded and you will see.

While I received many positive responses to my last message--the one encouraging all people on this list to take a stand against the Wisconsin Realtors Association's, WRA's, desire to pass a deceptive, fatally-flawed, anti-consumer piece of legislation called Designated Agency--there was a small handful of Realtors who wrote me saying that I must really think they are a bunch of crooks and are totally lacking in ethics. Nothing could be farther from the truth.

Here are some, in context, anonymous quotes:

"...ethics belong to the individual, and strength of character dictates how true an individual is to their code. Try to have more faith in your fellow realtors - we aren't all that bad."

--ST

"You seem to have placed yourself upon some sort of ethical pedestal. Are we all crooks but you?"

--DM

"Apparently you have no faith in the integrity of individual agents and their ability to properly serve their clients."

--MJ

My friends...this is not about you. This is about creating a law that allows the UNETHICAL and DISHONEST among us--or who wish to become one of our number--to abuse the home buying and selling public by using the flaws and deceptions that will be allowed/encouraged under the proposed Designated Agency law.

Prior to 1994 in Wisconsin, the common law of agency determined the legal duties that firms who offered agency level services were to provide their clients...those people who hired them to protect their interests and serve as advocates for their positions. (That would be buyer OR seller clients.)

The legal mandate under the common law of agency is that the agent/firm must put the interests of the client ahead of all others, including the agent's own interests. (There is not now--nor has there ever been--any higher standard.)

The common law of agency is also about minimizing the number of conflicts of interest to which the client is exposed...AND disclosing to the client ANY instances where any known conflict of interest pre-exists...or arises.

The most common conflict of interest when dealing with companies that represent both seller interests and buyer interests in the same transaction, is the conflict of interest between the desire of the seller to get the highest price/best possible terms and the buyer's desire to get the lowest price/best possible terms. However, it is NOT the only conflict.

The next biggest conflict is between the brokerage and each

respective client in the transaction. It is in the best interest of the brokerage to put the deal together. When ONE brokerage has the ability to exercise influence and--ostensibly--control over two parties in the same transaction, the firm has opportunity, in addition to motive, to engage in dealmaking, instead of watching out for each client's respective best interests.

The firm also can exert both intended and unintended pressure on its agents--by the way, that's the real reason why licensees are called agents...because they are, and always have been, agents of the company--to bring the deal together. (You licensees do know that you owe fiduciary duties to your company, don't you?)

For instance:

Does your company offer sales contests or other incentives for you to rack up the most sales in a given time period?

Does your company give major consideration to your sales volume when deciding whether or not to move you into a management position? (Especially a sales management position?)

Does your company offer a different fee split to YOU, based on whether or not you are helping a buyer purchase a company controlled listing instead of another brokerage house's listing?

These are just a few examples of the pressures which exist in your sales environment that can lead to conflicts with the best interests of your clients, both buyers and sellers.

The only firms who can avoid these conflicts, would be firms that offer agency-level services ONLY to sellers or firms that offer agency level services ONLY to buyers.

It is perfectly appropriate for firms who do not offer any buyer agency services to engage in all of the activities mentioned above, because they only represent seller interests and hence only offer customer level services to buyers.

For a firm that does not offer any seller representation, but only buyer representation--or for a firm that offers both it would be wholly inappropriate to generate such conflicts as mentioned above as such incentives compete with the best interests of one or even both clients.

The obligation of every buyer agent has to be to work toward getting their client the lowest price at the best possible terms on the home that the client wants. Conflicts with your clients best interests, must be disclosed--in advance of offering services--or, if the conflict arises after the relationship begins, the conflict must be disclosed immediately upon realization of its existence.

Designated Agency takes what used to be illegal--UNdisclosed dual agency--and gives it the seal of government approval. It allows any UNETHICAL licensee or broker/owner to take advantage of the relationship with one or both clients to benefit the licensee or broker/owner ALL WITH THE BLESSING OF THE LAW.

Can you think of ANY other law that was created with the foreknowledge that such a loophole exists? A law that would allow unethical...even criminal behavior to be protected and moreover encouraged by its mere existence?

No.

Laws are there to protect, not to allow for deception or willful subversion of the law.

So, unless you are one who would abuse the law, my opposition to Designated Agency is not directed at you. But, regardless of where it is directed, it is bad for all of our reputations and for our industry and State to allow the introduction of a practice that allows unethical and criminal behavior to not only exist...but to be protected and thus encouraged by the law. That is exactly what Designated Agency does.

If you still choose to think that this is about your ethics and/or honesty, consider the following...

Would you--if you could--repeal our laws against murder? Why not? Certainly you would not commit murder...

Would you--if you could--repeal the laws that prohibit theft? Why not? Certainly you would not steal...

These laws are not there to keep YOU from violating them...they are there to protect us from the ethically challenged and the criminals among us--both white collar and other--that do exist.

Finally, let's consider Enron. Would you eliminate the legal right of a shareholder to be presented with a fair and accurate picture of the financial condition of a company whose stock s/he is holding and/or considering? What about the laws that apply to insider trading? Or what about laws that pertain to fraud? Just because you wouldn't engage in such practices, doesn't mean that the protection should not be there.

Just ask the pensioners and private citizens that held Enron stock and lost BILLIONS...including many who lost the majority of what they had in life savings, how they would feel about the repeal of such laws.

It is time for the Mega-Brokerage houses that control the WRA to stop trying to legislate away conflicts of interest. They can't be legislated away. The honest way to deal with this would be for those companies who want to work both sides of the transaction with reduced liability, is to act as facilitators.

As facilitators, those who wanted to sell--without worrying about providing agency-level services--could sell and those who wanted to take on the higher level duties of the common law agent could do so, provided--if they worked for companies that represented both buyers and sellers--they made all prospective clients aware, in advance of providing brokerage services, that they could possibly have to transition to being a facilitator if one client became interested in the property of another client.

Designated Agency is bad for Wisconsin buyers and sellers and the Mega-Brokers who control the Wisconsin Realtors Association are intent on blasting this law through the legislature without any interference or input from consumers. What's more, I believe they know it is bad for consumers, as I will attempt to show you in one of the next few messages.

To find out who your legislators are and how to contact them, visit this link:

<http://www.legis.state.wi.us/wamltest/>

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Sincerely Yours,

Jay Reifert, Broker/Owner*****Excel-Exclusive Buyer Agency
100% Homebuyer Representation*****5136 E. Hilltop Road
100% Of The Time*****Madison, Wisconsin 53711
South Central Wisconsin's ONLY***** (800) 928-9379, Toll Free
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or <mailto:true-agents@true-agent.com>

Check out our NEW website, at: <http://www.Buy-Madison-Real-Estate.com>

Subject: No Higher Standard--The Common Law of Agency

Date: Tue, 05 Feb 2002 15:41:29 -0600

From: Jay Reifert <true-agents@true-agent.com>

Organization: Excel-Exclusive Buyer Agency

To: Oppose the WRA--Defeat Designated Agency <REAL_Defender1@true-agent.com>

[This message is going out to thousands of Wisconsin Realtors, almost 500 governmental officials--including all State Legislators and their respective staffs, the Governor of Wisconsin and most candidates for Governor of Wisconsin, the Attorney General of Wisconsin, over 425 Consumer Advocacy Groups and/or individual Consumer Advocates, over 285 Registered Wisconsin Lobbyists and over 190 Media Outlets.]

No Higher Standard--The Common Law of Agency

Please Note: A number of people have been asking for factual references. After the prefacing remarks immediately below and the closing remarks at the very end, this message will be completely factual, except where it is necessary to give BRIEF explanation for the sake of clarity/ease of use.

Begin Preface

For over three hundred years--yes, that's right, it precedes even the founding of this nation--the common law of agency has been the underlying legal framework for establishing how agents are to serve their clients.

These laws most likely originated from the understanding of one basic, common human flaw...left to our own devices, we will most likely choose the course of action that is most beneficial to US.

Therefore, agents--people who are retained by clients to help them do things which they either will not do for themselves or choose not to do for themselves--had to have legal guidelines to keep them from putting their own interests ahead of that of their clients.

To keep agents from taking advantage of their clients, the common law of agency evolved. The basic precept of the common law of agency is that the agent is to put the interests of the client ahead of all others...including his or her own. In three hundred years, this need has still not diminished, as basic human nature has not changed.

Designated Agency threatens the common law, by allowing those who are ethically challenged, or those with criminal intent, the ability to use the law as a shield for what would previously have been illegal activities.

No law should ever be passed that gives such obvious opportunity for abuse.

End Preface

According to Harvard and many other prestigious sources, the "Restatement of the Law, Agency (Second)" is an, if not the, authoritative source for understanding the common law of agency.

In this message, you will be provided with an internet link that will take you to a copy of Chapter 13 of this exhaustive work, which sets forth the "Duties and Liabilities of Agent to Principal".

Prefacing this book, will be Harvard's endorsement, some brief introductory material and then, Chapter 13.

I would submit for your consideration that the most important part of each Section is the bold faced paragraph which is to the immediate right of each Section Number, as it gives the applicable principle of the law.

However, you will have the ability to review the commentary as well, as by such review you can gain further understanding of the applicable principle.

In order to access this reference material, you will need to have the free Adobe Acrobat Reader on your computer, an essential

tool for any serious internet user. If you do not have it, you can download it--free--by going to <http://www.adobe.com> .

Here are the pertinent Sections, identified first by Section number then by page:

Chapter 1

Section 1, Page 7 Agency; Principal; Agent

Chapter 13

Section 377, Page 174 Contractual Duties

Section 379, Page 177 Duty of Care and Skill

Section 381, Page 182 Duty to Give Information

Section 382, Page 185 Duty to Keep and Render Accounts

Section 383, Page 187 Duty to Act Only as Authorized

Section 385, Page 192 Duty to Obey

Section 387, Page 201 (Duty of Loyalty) General Principle

Section 388, Page 203 Duty to Account for Profits...

Section 389, Page 205 Acting AS Adverse Party without...

Section 390, Page 208 Acting AS Adverse Party with...

Section 391, Page 212 Acting FOR Adverse Party without...

Section 392, Page 215 Acting FOR Adverse Party with...

Section 394, Page 219 Acting for One with Conflicting Interests

Section 395, Page 221 Using or Disclosing Confidential Info...

Section 396, Page 223 Using Confidential Information after...

Here is the link to the site:

<http://www.true-agent.com/restatement.pdf>

Please note that the document which your web browser will be retrieving is a very large file and that--if you're not using a high speed internet connection like a cable modem, DSL or T1 line, I would suggest clicking the link, and then checking back periodically to see if it has completely loaded.

Final Remarks

Arguably, the most important of the foregoing are those that deal with the topics of Loyalty, Confidentiality, Accounting, Notice, Disclosure and Using Reasonable Skill and Care as these are the duties most frequently encountered.

At its simplest, the relationship between the agent/firm and the principal/client can be summed up in that the agent/firm is expected to place the interests of the client ahead of all others, including their own.

Agency is not about sales. Agency is about FIDUCIARY service.

To understand more about how agency-level obligations occur at the firm level, not the individual licensee level, you may want to review the ethical standards to which attorneys must adhere when representing clients by visiting:

http://www.true-agent.com/common_law_ethics.pdf

The same is true of real estate agents under the common law. See Sections 391, 392 and 394 of the Restatement .

Designated Agency is not good for the consumers of the State of Wisconsin. When one broker can appoint an agent to represent a client of the firm who is selling and a client of the firm who is buying IN THE SAME TRANSACTION, there is not only motive and opportunity for mischief...but under Designated Agency, there would be the blessing of the law.

Please oppose Designated Agency.

Please contact your legislator and tell them that you oppose Designated Agency. Write them...call them...email them, or the Wisconsin Realtors Association will roll right over your rights.

To find out who your legislators are and how to contact them, visit this link:

<http://www.legis.state.wi.us/wamltest/>

Thank you for your time and patience.

--

Sincerely Yours,

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or <mailto:true-agents@true-agent.com>

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Subject: Bombshell!!! Wisconsin Realtors Association Secretly Fleeces Wisconsin Home Sellers and Buyers

Date: Tue, 05 Feb 2002 17:59:42 -0600

From: Jay Reifert <true-agents@true-agent.com>

Organization: Excel-Exclusive Buyer Agency

To: Oppose the WRA--Defeat Designated Agency <REAL_Defender1@true-agent.com>

My apologies to those of you who were receiving two copies of each message. There was a technical glitch that lead to the duplication. It has been corrected. JR

As with the other messages, this one is going out to thousands of Wisconsin Realtors, almost 500 governmental officials--including all State Legislators and their respective staffs, the Governor of Wisconsin and most candidates for Governor of Wisconsin, the Attorney General of Wisconsin, over 425 Consumer Advocacy Groups and/or individual Consumer Advocates, over 285 Registered Wisconsin Lobbyists and over 190 Media Outlets. PLEASE forward this message to everyone you can and please also print it out--and distribute--to those who you know that don't have email capabilities.]

Bombshell! Wisconsin Realtors Association Secretly Fleeces Wisconsin Home Sellers and Buyers

My name is Jay Reifert. I am a Realtor. I wish I could say that I'm proud of being a Realtor, but I can't. That lack of pride, by the way, has nothing to do with the individual Realtors I have met over my numerous years in this business, nor does it have anything to do with the members of my local Association.

That lack of pride comes from the way that the Wisconsin Realtors Association has secretly treated Wisconsin home buyers and sellers, by continually working over the last decade to erode what it means to provide agency-level services. By so doing, they have stolen something of value from every Wisconsin citizen who has bought or sold a home in the last seven, plus, years. Soon, they are going to attempt to make matters worse for consumers in Wisconsin via a concept known as Designated Agency.

I am a common law agent. My practice revolves around representing the best interests of home buyers and nothing I am about to say is going to change that. I will continue to offer full fiduciary services to my buyer clients. I also fully respect any Realtor or other licensee who represents the best interests of his/her clients in accordance with the common law, be those clients buyers OR sellers. Problem is, since the Wisconsin Agency "Reform" Act of 1994, those of us who have practiced true to the best interests of our clients have been breaking the law.

Yes, that's right, in Wisconsin, if you provide true, agency-level services to your buyer and/or seller clients, you are breaking the law for, in Wisconsin, all agents--as a result of the Agency "Reform" Act of 1994--were statutorily, and secretly, reduced to the status of non-agency FACILITATORS.

Please join me now, as I lay out for you the trail of deceit and deception foisted upon the people of the State of Wisconsin by the Wisconsin Realtors Association. Then, I would ask all Realtors of good conscience and the citizens of the State of Wisconsin to join with me in righting this wrong by fighting for legislation to return the common law of agency to Wisconsin and to help me prevent another injustice by opposing the anti-consumer scheme known as Designated Agency.

And when they--the WRA--tells you that twenty-some states have passed, or are attempting to pass, Designated Agency legislation, remember two things: 1) If twenty-some states do a stupid thing, it is still a stupid thing, and 2) The WRA is the same entity that introduced the Agency "Reform" Act of '94 under the guise of consumer protection.

It truly is the height of cynical arrogance for the WRA to propose adding another false agency scheme such as Designated Agency on top of the non-agency scheme that they already have in place.

Prior to now, you could plead ignorance of the truth, as it was so well hidden that few had any clue what had happened. After this message, that will no longer be the case and you will have to choose between what's good for the consumer and your reputation and what's good for the mega-brokers' bottom line.

For nearly all of the Twentieth Century, the National Association of Realtors--or its earlier incarnations--subscribed to the principle that the common law of agency, though only offered--at that time--to sellers, was the bedrock upon which services would be provided.

In the late 1980s, pioneers of exclusive buyer representation began making their first public steps onto the real estate scene, aided in large part by the integrity and foresight of the single-agency pioneers that preceded them. (Single agents--and their firms--represent buyers or sellers, but not both in the same transaction.)

Concerned by the prospect of seeing reduced profits as a result of the introduction/acceptance of true buyer agency in Wisconsin, the largest, most powerful brokerage firms in the State--the firms that effectively control the Wisconsin Realtors Association--formulated a plan that would allow them to preserve their profits at the expense of every home buyer and seller in Wisconsin.

They knew that they could not compete with true buyer agents under a common law of agency model--the then current standard in Wisconsin--so they had to act quickly, before the advancing consumer movement and true buyer agency took away their access to the buyer side of their business.

To fully grasp the scheme of the WRA, it is crucial to understand what was happening on a national level. In 1993, the results of a National Association of Realtors Presidential Advisory Group, (PAG) was released on the subject of facilitators.

In real estate, facilitators are middlemen who work to bring a transaction together. They do not represent the best interests of either party. They are strictly salespeople...which is just fine, so long as the customers they serve are aware of their limitations and the loss of representation.

The findings of the 1993 NAR PAG Report on Facilitator/Non-Agency were of great concern to many in the real estate business, as they bore out one simple conclusion: Sellers, who were already entitled to common law agency services from agents, and buyers, who were just starting to receive the benefits of common law agency services from the pioneer buyer agents, BOTH understood that facilitators provided a reduced level of service and, as such, SHOULD BE PAID LESS than a common law agent.

Needless to say, NAR--while recognizing that facilitation could be a viable, professional practice--recommended against the State Associations pursuing a model that would threaten to chip away at the income of its members. (You can view a copy of the entire PAG and the survey results by visiting:

<http://www.true-agent.com/pag93.pdf>

Again, if you don't have the free Adobe Acrobat Reader, which is necessary to view this file, you can download it for free at: <http://www.adobe.com> .

Now let us return to Wisconsin and remember...prior to 1994, all Wisconsin licensees/firms were held to the standards of the common law of agency, when providing client level services, which were at that time, still mostly provided to sellers.

Then, seemingly overnight, it happened. With the stroke of then Governor Thompson's pen, all Wisconsin licensees became facilitators in fact, but NEVER once was this mentioned in name. In other words, Wisconsin buyer and seller clients have never stopped paying for common law of agency level services...but, according to the law, they are now only entitled to receive the lesser services of a facilitator.

(For any who might be inclined to ask why I didn't make such a big deal of this back then, the answer is, I DID. I was the original whistleblower back in the early '90's when the WRA first introduced that which became the Agency "Reform" Act of '94. There was no internet to help raise awareness back then and my protestations largely fell on deaf ears until the eleventh hour, at which point there was simply no stopping the WRA juggernaut.)

While I find it to be reprehensible that home buyer and seller clients in the State of Wisconsin have had their right to full fiduciary services stolen from them by the WRA, what I find to be even more vile, is that the WRA has purposely kept the true meaning of the law a secret, undoubtedly because they

too know that the services of a facilitator are not worth the same as that of a common law agent.

Because of the scope and complexity of this subject matter, it's necessary to break this message into a second part. Shortly, you will receive that second section...which contains the proof necessary to show that home seller and buyer clients in Wisconsin have, in fact, been robbed of the highest level services available under the law. The services that flow from the common law of agency.

You'll be happy to know that after the next message, any subsequent message you get from me will be much, much shorter.

You may also be pleased to know that there will soon be a website with additional information available for you to share with other interested parties at: <http://www.real-reform.org> .

Not only will all previous and subsequent information be archived there, but--very soon--you will be able to view a live action illustration of how the money flows in typical agency relationships, including how it flows under the proposed concept of Designated Agency.

As a friend of mine likes to say...follow the money trail.

PLEASE forward this message to everyone you can and please also print it out--and distribute--to those who you know that don't have email capabilities.

In spite of the fact that the full language of the Designated Language legislation has not yet been drafted/submitted, you can find out how to contact your legislator to register your opposition to Designated Agency by going to:

<http://www.legis.state.wi.us/wamltest/>

Thank you again for your time and patience.

--
Sincerely Yours,

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or <mailto:true-agents@true-agent.com>

Check out our NEW website, at: <http://www.Buy-Madison-Real-Estate.com>

Subject: Proof of Deception--Wisconsin Realtors Association Secretly Fleeces Wisconsin Home Sellers and Buyers, Part II

Date: Tue, 05 Feb 2002 15:42:03 -0600

From: Jay Reifert <true-agents@true-agent.com>

Organization: Excel-Exclusive Buyer Agency

To: Oppose the WRA--Defeat Designated Agency <REAL_Defender1@true-agent.com>

As with the other messages, this one is going out to thousands of Wisconsin Realtors, almost 500 governmental officials--including all State Legislators and their respective staffs, the Governor of Wisconsin and most candidates for Governor of Wisconsin, the Attorney General of Wisconsin, over 425 Consumer Advocacy Groups and/or individual Consumer Advocates, over 285 Registered Wisconsin Lobbyists and over 190 Media Outlets. PLEASE forward this message to everyone you can and please also print it out--and distribute--to those who you know that don't have email capabilities.]

Proof of Deception--Wisconsin Realtors Association Secretly
Fleeces Wisconsin Home Sellers and Buyers, Part II

Under the common law of agency, the agent/firm is to put the interests of the client ahead of all others, including their own.

An intermediary, facilitator or transaction broker assists a party in the purchase or sale of real estate. Such a service provider cannot put the interests of either party ahead of the other. They must remain neutral.

So, if it costs you the same amount of money for each type of service provider--and you could hold the common law agent responsible to a much higher standard than the facilitator...which would you rather have?

Well, having a common law agent was your right, until the Agency "Reform" Act of '94.

In 1994, the Wisconsin Realtors Association succeeded in drafting, submitting and passing legislation which turned every Wisconsin licensee into a de facto facilitator, quietly robbing every home buyer and seller in the State of Wisconsin of the legal right to receive true, agency-level services from a real estate licensee. Prior to this time the common law of agency was the default service for sellers and was just beginning to be offered to buyers.

Here, taken from the state-mandated Disclosure of Real Estate Agency and from Chapter 452 of the Wisconsin's Statutes, are many--but probably not all--of the changes which the Wisconsin Realtors Association secretively foisted upon the unsuspecting public.

You can find these documents by visting:

http://www.true-agent.com/wra_robs_wisconsin_buyers_and_sellers.pdf

From the State-Mandated Disclosure of Real Estate Agency, Page 2
Under Duties to All Parties:

55(a) Provide brokerage services to all parties to the transaction honestly, fairly and in good faith.

Certainly, clients are owed this duty. To confer this duty, as it is written, on customers--people who have not contracted with an agent to represent their interests, but who have instead decided to work with a salesperson--would only be fair, with a slight modification.

If it read, "Provide brokerage services to all parties to the transaction honestly, fairly and in good faith, subject to an agent's duty to a client under the common law," then it would not allow a customer's status to diminish the rights of a client under the common law.

Otherwise, left as it is, this is an element of the services of a facilitator.

Further, "fair treatment" as the Wisconsin Realtors Association uses it, is an excuse/opportunity for the licensee/firm to engage in dealmaking at the expense of the client, as who is the party that will determine what is "fair" if not the licensee?

Certainly, it has robbed the client--s/he who is paying for agency-level services--of the previous standard of having his/her interests placed first in the transaction.

56(b) Diligently exercise reasonable skill and care in providing brokerage service to all parties.

Providing such a service to a customer will not diminish any services provided to a client. As such, I see nothing objectionable in this duty, although this is also a service performed by a facilitator.

57(c) (No complaint about this requirement. Also a service performed by a facilitator.)

59(d) Keep confidential any information given to the broker in confidence, or any information obtained by the broker that he or she knows a reasonable party would want to be kept confidential...

Clients are definitely owed this duty under the common law of agency. Giving this duty to customers, robs the client of information that clients were previously entitled to know, if discovered

.
Customers, as previously, should be given disclosures letting them know that they should not share secrets with agents of the opposing party. They should also be given disclosures, in advance of working with a licensee, about the fact that they have the right to retain an agent of their own.

As it is written, this is also a service performed by a facilitator.

65(e) Provide accurate information about market conditions that affect a transaction, to any party who requests the information, within a reasonable time of the party's request, unless disclosure of the information is prohibited by law.

Not only are clients entitled to this, but they are also entitled to interpretation and advice of the agent, with regards to the information provided.

Customers who want such services, should hire their own agent. Causing an agent for another party to work against his/her client's interests is reprehensible.

This is also a service performed by a facilitator.

67(f) Account for all property coming into the possession of a broker that belongs to any party within a reasonable time of receiving the property.

This has no impact on the interests of a client, and-as such--is not problematic. However, this too is a service of a facilitator.

69(g) When negotiating on behalf of a party, present contract proposals in an objective and unbiased manner and disclose the advantages and disadvantages of the proposals.

Utterly reprehensible. The client, who is paying to have his/her interests represented, is having his/her interests completely neutralized by putting the interests of the customer on par with his/her interests.

If the customer party wishes to have representation, then s/he should retain an agent of his/her own.

This change is the single most damaging aspect of the Wisconsin Realtors Association's duplicitous law, save for the clause put in the Wisconsin Statutes--by the WRA--that suspends the common law of agency to the degree that it conflicts with the WRA's statutory monstrosity.

This is definitely a service offered by a facilitator.

Under Duties to a Client

74(a) Loyally represent the client's interests by placing the client's interests ahead of all others, UNLESS LOYALTY TO A CLIENT VIOLATES THE BROKER'S DUTIES UNDER LINES 52 TO 70...
[emphasis added]

Sigh. In other words, because of the facilitator imposed duties to customers under the WRA Agency "Reform" Act of '94, the duty of the agent to give the client undivided loyalty...possibly the greatest duty that the client was owed under the common law of agency...is essentially meaningless.

Are you beginning to see the scam? Are you beginning to understand just how much has been taken from both the seller client and the buyer client in Wisconsin?

77(b) Disclose to the client all information known by broker that is material to the transaction and that is not known by the client or discoverable by the client through reasonably vigilant observation, EXCEPT FOR CONFIDENTIAL INFORMATION...

Again, another agency-level service rendered meaningless.

80(c) Fulfill any other obligation required by the agency agreement and any order of the client that is within the scope of the agency agreement, that are not inconsistent with another duty that the broker has under this chapter or any other law.

Naturally, the last half of the sentence entirely negates the first, as there are severe modifications to what a client used to have the right to expect out of their agent by almost all of the duties owed to the other party!

This scheme, dressed up to look like consumer protection, by abusing fuzzy concepts like "fairness" has made Wisconsin the most backward state in the nation when it comes to client's rights.

Next stop, Chapter 452 of the Wisconsin Statutes.

Under 452.01 Definitions

(5m)(a)-(d) the law defines "Negotiate". Again, the language is facilitator language and succeeds in robbing the client of that to which s/he was formerly entitled. (It's available at the previous link for your review.)

and finally, 452.139 Changes in common law duties and liabilities of broker and parties. (1) FIDUCIARY DUTIES OF BROKER. The duties of a broker specified in this chapter or in rules promulgated under this chapter shall SUPERSEDE ANY FIDUCIARY DUTIES OF A BROKER TO A PARTY BASED ON THE COMMON LAW PRINCIPLES OF AGENCY TO THE EXTENT THAT THOSE COMMON LAW FIDUCIARY DUTIES ARE INCONSISTENT WITH THE DUTIES SPECIFIED IN THIS CHAPTER OR IN RULES PROMULGATED UNDER THIS CHAPTER. [emphasis added]

The coup de gras. This is what essentially renders the common law meaningless as it pertains to the duties that agents in Wisconsin used to owe their clients, because of all the facilitator duties that are imposed by the Agency "Reform" Act of '94.

Few, very few, understood that this is what the Wisconsin Realtors Association was doing. The benefit to their large brokerage constituencies under this law should be obvious, though.

If all Wisconsin licensees are incapable by law of rising above the status of facilitator, then the in-house transaction is safe from assault by buyer agency and s/he who has the most money for advertising wins.

Do you get what happened here? All of you licensees--which I believe is probably most of you--are violating the law when you put the interests of your clients above those of the other party in the transaction.

All of you buyers and sellers who are paying for agency-level services are being left with licensees who--though they may

be providing it in violation of the law, as I do and will continue to do--are entitled to hide behind the fairness provisions of the law, to decide what needs to be done to put the deal together. I am an agent...not a facilitator.

The good old Wisconsin Realtors Association. Champions of consumer rights. And now, they want to layer the deceptive, anti-consumer practice of Designated Agency on top of it.

Fellow Realtors, it is time to make the Wisconsin (Mega-Broker's) realtors Association the Wisconsin REALTORS Association. Otherwise, your reputation is going to be damaged by extension. It is time to make your voice be heard now! Call them. Call your legislators. Tell them that you are tired of being overlooked. Tell them that you favor a restoration of the common law of agency and that you oppose the concept of Designated Agency.

Consumers...it also time to make your voices be heard!

With very few exceptions, we need to press the legislature NOW to roll back the Agency "Reform" Act of '94, restoring the common sense, common law of agency to being the law of the land for those who would purport to represent the interests of others. You are paying for agency-level services and you should be getting them!

One of the few Reforms that actually should be kept from this otherwise disgraceful Act, though, is the elimination of Respondeat Superior, the responsibility that the client and primary agent bore for the acts of subagents. This was a good and just change.

One other side benefit of returning to the common law, is that we can greatly simplify our disclosure forms, to the point where it can be this simple:

Listing Agents & their firms, and subagents from other firms owe their seller clients all of the fiduciary duties owed clients under the common law of agency. Agents for the seller have the duty to put the interests of the seller above all others, including their own.

Buyer Agents & their firms owe their buyer clients all of the fiduciary duties owed clients under the common law of agency. Agents for the buyer have the duty to put the interests of the buyer above all others, including their own.

Dual Agents owe their clients all of the fiduciary duties owed to a client under the common law, except that they may not put the interests of either client ahead of the other.

Customers of any agent are entitled to receive brokerage services that are rendered fairly, honestly and in good faith...only limited by the agent's superior duty to a client.

It can be THAT simple.

Once we have restored the common law, then--to give licensees and consumers more choices--we can pursue a facilitator option in Wisconsin. If that's what the Wisconsin Realtors Association thinks was/is best for their large broker constituencies, let's give it to them!

And once we have established the facilitator concept, legitimately, then we can abolish dual agency, which is actually--except in very rare circumstances--a legal fiction in its own right.

Please...contact your legislators and the Wisconsin Realtors Association today! The WRA can be reached at (608)241-2047 and you can find your legislator's contact information by visiting:

<http://www.legis.state.wi.us/wamltest/>

Thank you...

--
Sincerely Yours,

Jay Reifert, Broker/Owner*****Excel-Exclusive Buyer Agency
100% Homebuyer Representation*****5136 E. Hilltop Road
100% Of The Time*****Madison, Wisconsin 53711
South Central Wisconsin's ONLY***** (800)928-9379, Toll Free
Full-Time Exclusive Buyer Agency Firm.*** (608)273-8841, Office
Visit <http://www.true-agent.com> ***** (608)273-8388, Fax Machine
or <mailto:true-agents@true-agent.com>

Proof of Deception--Wisconsin Realtors Ass...Wisconsin Home Sellers and Buyers, Part II

Check out our NEW website, at: <http://www.Buy-Madison-Real-Estate.com>

Subject: Fair-Minded People Agree--The WRA Practices/Promotes Willful Deception

Date: Thu, 07 Feb 2002 09:39:07 -0600

From: Jay Reifert <true-agents@true-agent.com>

Organization: Excel-Exclusive Buyer Agency

To: Oppose the WRA--Defeat Designated Agency <REAL_Defender1@true-agent.com>

[Please Note: Those TEN of you who have requested to be unsubscribed from this alternative news/opinion source since receiving the Wisconsin (MegaBroker) Realtors Association "Designated Agency Update" will be unsubscribed immediately after this message has been sent. You received their deceptive message...you also deserve the chance to see how they are willfully distorting/omitting the facts.]

List Removal Instructions: Reply to this Message With "Remove" in the Subject Line or Body of the Message.

As usual, this message is going out to thousands of Wisconsin Realtors, almost 500 governmental officials--including all State Legislators and their respective staffs, the Governor of Wisconsin and most candidates for Governor of Wisconsin, the Attorney General of Wisconsin, over 425 Consumer Advocacy Groups and/or individual Consumer Advocates, over 285 Registered Wisconsin Lobbyists and over 190 Media Outlets.

PLEASE forward this message to everyone you can and please also print it out--and distribute--to those who you know that don't have email capabilities.]

Intelligent People Agree--The WRA Practices/Promotes Willful Deception

"Oh what a tangled web we weave, when first we practice to deceive."

--Sir Walter Scott, Scottish Novelist and Poet

What you are about to review should astound you. It should also make it clear to just what depths the Wisconsin Realtors Association is willing to descend to keep honest information from getting out about the anti-consumer, anti-realtor, fatally-flawed concept of Designated Agency.

[Reminder: Designated Agency is the concept whereby the broker/owner or manager of a realty firm "designates" one licensee to represent the best interests of a seller client of the firm in direct opposition against a licensee that the broker/owner or manager "designates" to represent the best interests of a buyer client of the firm...in the SAME TRANSACTION. Miracle of all miracles...there is no longer any conflict of interest! The firm will now negotiate against itself and its against its own interest of seeing the transaction come together.]

To see a graphic depiction of designated agency--and other forms of agency--at least in a state where not all licensees have been turned into facilitators, visit <http://www.real-reform.org> .

The illustration of the money trail may help people understand how designated agency is in the firm's best interests and creates a conflict between the interests of the clients and the firm.

Time now, however, to expose more of the deception of the Wisconsin Realtors Association.

Although nothing can possibly top the deception that the Wisconsin Realtors Association pulled off with the Agency "Reform" Act of 1994...taking away the rights of seller and buyer clients to truly be represented in a transaction by making all Wisconsin licensees facilitators under the law, layering Designated Agency over the top of that misguided non-representation scheme comes in a close second.

But...you already know all of that. Here are a number of deceptions perpetrated by the Wisconsin Realtors Association that you do not yet know.

When you are finished reading these, ask yourself, do you consider the Wisconsin Realtors Association to be trustworthy when they tell you that they are on the side of the consumer? Aren't you perhaps

curious about why they are trying--unsuccessfully, I might add--to shut me up?

Deception #1: The WRA asserts that the Real Estate Board supports the concept of Designated Agency.

On Wednesday, January 23, 2002 at about 8:30pm all of you on this list began receiving messages from Mr. Reifert. By 11:00am on the following morning--barely more than twelve hours later--the Wisconsin Realtors Association, WRA, released to all persons in attendance at the Realtor and Government Day at the Monona Terrace and Convention Center in Madison, and via email to every Realtor with email in the State of Wisconsin, a written response to Jay Reifert's Call to Action for Realtors to Oppose Designated Agency.

In that piece, under the paragraph titled, "WRA Response to Designated Agency E-Mail", the WRA claimed that the State of Wisconsin, "...Real Estate Board support the concept of Designated Agency."

According to information that Mr. Reifert received from Mr. Clete Hansen, Administrator of the Division of Board Services for the Department of Regulation and Licensing--the staff person who would know whether or not the Real Estate Board had issued support for the concept of Designated Agency, the WRA's assertion is untrue.

In Mr. Hansen's response to Mr. Reifert, Mr. Hansen indicated that he reviewed the minutes of the Real Estate Board from January 1, 1999 to December 31, 2001. Designated Agency was not mentioned in the minutes at all during that time period and no vote or other show of support of the concept occurred during that time period.

In other words, the statement by the WRA was either a bold-faced lie, or a deception of the grandest order, as it was meant to convey that there was support where none was given.

(You can view a full copy of the WRA's statement and of the correspondence between Mr. Hansen and Mr. Reifert at:

http://www.true-agent.com/wra_misleads_realtors_statewide.pdf

(<http://www.adobe.com> if you need the free Acrobat Reader.)

While it is arguably true that the Wisconsin Real Estate Board will eventually support the concept, since on this entity which is supposed to act as a counterbalance to the power of associations like the Wisconsin Realtors Association, four out of the seven members of the Real Estate Board, a clear majority, ARE REALTORS.

Further, three of out of the four REALTOR members are mega-brokers who own multiple real estate offices and will be the direct beneficiaries of the deception afforded by Designated Agency if it becomes law.

Of the remaining members of the Real Estate Board...those who are presumed to be on the consumer side, one of them winters in the Southwestern United States--and hence does not attend Board meetings--and the two others from the "consumer" side were appointed sometime in the month of January 2002, probably not even a full month ago! (And one of them is affiliated with WHEDA, the Wisconsin Housing and Economic Development Authority, which--as a lender of funds used by Realtors--is not exactly an entity that is likely to want to draw the ire of the WRA.)

Consumers probably have ONE advocate on the Wisconsin Real Estate Board.

So, even if all Board members would attend meetings, the Realtors will always have the majority necessary to pass whatever they wish to see passed.

Nonetheless, the point still stands that the Wisconsin Real Estate Board has not (yet) voted to support the concept of Designated Agency and the WRA has purposely worked to create the false impression that the Board has.

Deception #2: The WRA issues a Designated Agency Update full of deceptions about the concept which will be detailed and debunked in a different message...and then cites information from its website intended to create the impression that Mr. Reifert had misappropriated the WRA's freely accessible, downloadable database.

This morning--Monday, February 4, 2002--at about 10:15am, Attorney

Rick Staff, General Counsel for the WRA and the primary architect of both the deceptive Agency "Reform" Act of 1994 and the equally flawed, deceptive--and hypocritical--proposed Designated Agency legislation, released an email under his name that purported that Mr. Reifert misappropriated the WRA Member Database for uses that were prohibited.

Aside from the fact that Mr. Reifert is a member of the WRA and should have a right to communicate with members in any fashion that he sees fit, it is not only interesting, but instructive, to note that Attorney Staff quoted a version of the WRA Terms of Service which was revised and placed on the website on February 1, 2002, which was AFTER Mr. Reifert had already downloaded the database and begun using it on January 23, 2002.

This version has been MARKEDLY changed, as to create the impression that Mr. Reifert had knowingly violated a rule which--even though the WRA couldn't enforce this new rule if they tried--was created specifically to cast doubt upon Mr. Reifert's character. (I wonder if Attorney Staff is familiar with the meaning of an Ex Post Facto law and just how Un-American and reprehensible such an act is?)

Well, you can view a copy of the version that existed PRIOR to February 1, 2002 by going to:

http://www.true-agent.com/wra_misleads_realtors_statewide2.pdf

Print them both out and pay special attention to the differences. It is extremely obvious that the revision was done in an effort to create the maximum amount of damage to Mr. Reifert's reputation that the WRA could. (Next time, Attorney Staff, perhaps you should point the barrel of your weapon away from your face before pulling the trigger.)

Additionally, Attorney Staff has tried to assert that the names in the database are protected by copyright...something that--according to United States copyright law--is extremely unlikely, given the fact that there is nothing original or creative about a list of names.

So, dear fellow Realtors and other interested parties, when you are trying to decide who to believe in this debate, remember that the WRA has now put their foot in their collective mouths TWICE in a way that is easily provable...and that they have already screwed every seller and buyer client in the State of Wisconsin by taking away every client's right to have a true agent looking out for them.

Facilitators cannot represent anyone other than themselves in a transaction and Wisconsin has a de facto facilitator law as a result of the WRA's deceptions under the Agency "Reform" Act of 1994.

Call, write or email your legislator today and make sure that they know that you oppose Designated Agency. You cannot trust the Wisconsin Realtors Association. They do not speak for individual Realtors. They speak for their mega-broker constituencies.

In spite of the fact that the full language of the Designated Language legislation has not yet been drafted/submitted, you can find out how to contact your legislator to register your opposition to Designated Agency by going to:

<http://www.legis.state.wi.us/wamltest/>

Coming Next: "Putting the 'Wisconsin Realtor' Back in the Wisconsin Realtors Association". Learn who really controls the WRA, how they have managed to abuse the citizens of the State of Wisconsin, and how realtors of good conscience can fight against, or possibly even take back the WRA.

One final comment. What Attorney Staff said about a broker/owner who asked that his entire firm be unsubscribed was correct. I have told two broker/owners that I would not remove their firms, as it is not their right to censor what individual WRA dues-paying licensees who work for them see and do not see.

My thanks to the THOUSANDS of you who are giving the truth a chance to be spoken.

--
Sincerely Yours,

Jay Reifert, Broker/Owner*****Excel-Exclusive Buyer Agency
100% Homebuyer Representation*****5136 E. Hilltop Road
100% Of The Time*****Madison, Wisconsin 53711

Fair-Minded People Agree--The WRA Practices/Promotes Willful Deception

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Visit <http://www.true-agent.com> ***** (608) 273-8388, Fax Machine
or <mailto:true-agents@true-agent.com>

Check out our NEW website, at: <http://www.Buy-Madison-Real-Estate.com>

Subject: Special Bulletin: Fellow Realtor Says to WRA, Encourage the Debate!

Date: Mon, 11 Feb 2002 07:07:56 -0600

From: Jay Reifert <true-agents@true-agent.com>

Organization: Excel-Exclusive Buyer Agency

To: Oppose the WRA--Defeat Designated Agency <REAL_Defender1@true-agent.com>

[This message is going out to thousands of Wisconsin Realtors, almost 500 governmental officials--including all State Legislators and their respective staffs, the Governor of Wisconsin and most candidates for Governor of Wisconsin, the Attorney General of Wisconsin, over 425 Consumer Advocacy Groups and/or individual Consumer Advocates, over 285 Registered Wisconsin Lobbyists and over 190 Media Outlets.]

PLEASE forward this message to everyone you can and please also print it out--and distribute--to those who you know that don't have email capabilities.]

List Removal Instructions: Reply to this Message With "Remove" in the Subject Line or Body of the Message. Governmental Officials and Their Respective Staffs Will Not Be Removed From This List.

The following correspondence was sent by Tom Christensen, SRES, ABR, GRI, CRS, RECS...of Madison, Wisconsin to Rick Staff, General Counsel of the Wisconsin Realtors Association and a few other persons in leadership roles in the Realtors Association of South-Central Wisconsin and/or WRA.

Mr. Christensen and Mr. Reifert have never met and have only had contact with one another on a few occasions--probably less than a half dozen over the course of thirteen years--when Mr. Reifert has requested to show properties listed by Mr. Christensen.

Mr. Christensen is, though, known throughout South-Central Wisconsin for a Realtor to Realtor email list he maintains, through which he shares helpful information about his listings, various real estate service providers like roofers and other helpful information, too.

The following is being distributed with the permission of Mr. Christensen.

[Tom Christensen Said]

Rick,

I think you should encourage this guy to communicate all he can about the Designated Agency issue. Information and communication is good for everyone. Raising issues like this, even if perhaps not in the most polite manner, will raise interest in the organization and work to get more people involved. Information, and attitude, can't hurt anyone. And if the WRA position is good for all, a free and open, AND ENCOURGED, debate will end up making this more clear for all.

People should be encouraged to debate these issues....and by the way, to use the mailing list to get the word out to members. This is the kind of activity that brings life to the WRA and makes it interesting, and meaningful, to be a member.

PLEASE ENCOURGE THIS GUY AND THE DEBATE. For godsake, don't try to shut him down. A terrible precident to set for dealing with dissenting views in the organization.

This iconoclasitic approach to issues is a long tradition in Wisconsin. It is in the spirit that has formed and nurtured our statewide community for over 200 years. There is nothing to fear here and everything to gain. ENCOURAGE THIS DIALOGUE!!! Please shift your position from "defending" to "encouraging". This guy is one of us....all of us.

We're not all cookie cutter shaped agents. The diversity is essential to our vitality.

Best Wishes - Tom C. <http://www.centralmadison.com>

Final Comments of Mr. Reifert:

The Wisconsin Realtors Association was asked by me on several occasions to be included on any committee(s) that was/were to discuss the concept of Designated Agency.

I was not welcome to participate at any point. Thus, I have had no choice but to take my information public.

Please contact your legislators today and tell them that you oppose Designated Agency.

You can find out how to contact your legislator to register your opposition to Designated Agency by going to:

<http://www.legis.state.wi.us/wamltest/>

Next Issue: "Putting the 'Wisconsin Realtor' Back in the Wisconsin Realtors Association". Learn who really controls the WRA, how they have managed to abuse the citizens of the State of Wisconsin, and how realtors of good conscience can fight against, or possibly even take back the WRA.

On Deck: "Debunking Designated Agency" What the WRA didn't tell you in their Designated Agency Update. A point by point rebuttal and/or fuller disclosure of the facts they conveniently leave out.

--
Sincerely Yours,

Jay Reifert, Broker/Owner*****Excel-Exclusive Buyer Agency
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South Central Wisconsin's ONLY***** (800) 928-9379, Toll Free
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or <mailto:true-agents@true-agent.com>

Check out our NEW website, at: <http://www.Buy-Madison-Real-Estate.com>

Subject: Conspiracy--Wisconsin Realtors Association Conspires Against Membership/Public to Restrain Trade

Date: Mon, 11 Feb 2002 07:08:17 -0600

From: Jay Reifert <true-agents@true-agent.com>

Organization: Excel-Exclusive Buyer Agency

To: Oppose the WRA--Defeat Designated Agency <REAL_Defender1@true-agent.com>

[This message is going out to thousands of Wisconsin Realtors, almost 500 governmental officials--including all State Legislators and their respective staffs, the Governor of Wisconsin and most candidates for Governor of Wisconsin, the Attorney General of Wisconsin, over 425 Consumer Advocacy Groups and/or individual Consumer Advocates, over 285 Registered Wisconsin Lobbyists and over 190 Media Outlets.]

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Conspiracy--Wisconsin Realtors Association Conspires
Against Membership/Public to Restrain Trade

or

Putting the 'Wisconsin Realtor' Back in the Wisconsin
Realtors Association

[This message has been cc'd to the Anti-Trust Division of the US Department of Justice, the Federal Trade Commission and the State of Wisconsin Attorney General for investigation into possible Anti-Trust violations by the Wisconsin Realtors Association.]

What do you call it when a group of competitors who have real marketplace power get together behind closed doors, devise and promote a plan that will limit competition while enhancing their corporate bottom lines and depriving consumers of their constitutional rights all at the same time?

Well, in my opinion that would at the very least be an unspoken agreement to restrain trade, if not an overt violation of federal and state anti-trust laws.

Twice now, the Wisconsin Realtors Association has engaged in just such activities. First, in the early '90s, where their privately nurtured legislative initiative led to the Agency "Reform" Act of 1994.

As a result of that legislation, competition was limited in the State of Wisconsin by reducing all licensees in the state to the legal status of facilitators, thereby robbing Wisconsin home buyer and seller clients of the rights and protections that they were previously due under the law and simultaneously making it harder for small brokerages to compete with the huge advertising budgets of state Mega-Brokers.

This time around, the issue is Designated Agency and, while on the surface it could appear to some to be a reasonable proposition, below the surface it is just as anti-competitive, deceptive and bad for Wisconsin home buyers and sellers and small real estate offices as the Agency "Reform" Act of 1994, with the addition of a layer of hypocrisy to top it off, as there is no need to place another "Agency" scheme over what Wisconsin currently has, as current law prohibits true agency in the first place!

You see, while the common law of agency provided the home buying and selling client with the highest standard of service known under the law, Wisconsin's laws benefit large real estate companies by allowing them to give lip service to agency, while creating an artificial legal concept that will allow them to put together the deal at the expense of one or both clients in the same transaction.

Under the common law of agency, such a loophole does not exist, as both licensees of the same firm in the same transaction would be prohibited from putting the interests of either client ahead of the other thus extending protection to the clients from a broker's incentive to deal at their expense. The liability all accrues to the company that practices dual agency.

Under Designated Agency, that liability disappears entirely, removing the protections that the clients formerly had from firms who would attempt to put the deal together at the expense of one, or both, clients.

So, how can it be that such a thing would stand a snowball's chance in Hades of being promoted?

Quite simple. A concept like Designated Agency, while it has pitfalls for the individual licensees who practice it, offers the large firm a way to blur the difference between them and licensees who practice exclusive buyer agency and exclusive seller agency.

In fact, according to Rick Staff, General Counsel of the Wisconsin Realtors Association, once Designated Agency is passed, there will be no difference between a Designated Agent and an Exclusive Buyer Agent or Exclusive Seller Agent. (Not true...but his assertion nonetheless.)

The Wisconsin Realtors Association functions as a cartel. It, by virtue of the way it is governed, has full control placed in the hands of firms who will benefit from the anti-competitive aspects of the deceptive anti-consumer legislation that they are proposing.

Of the 32 Members of the Board of Directors of the Wisconsin Realtors Association, 2 Directors are from Affiliated Industries and, therefore really do not count. The 30 that are left break down as follows.

- 1 Director comes from an office that has a mere four associates.
- 4 Directors come from offices that have from 9 to 13 associates.
- 4 Directors come from offices that have from 28 to 46 associates.

That is 9 Directors out of 32 who come from small to medium sized offices.

Now, for the tragedy.

21 Directors come from companies that would be considered mega-brokers. Powerhouses of their marketplaces, these firms when they act in concert--as they are with concept of Designated Agency--have the ability to limit competition in the marketplace in the State of Wisconsin.

Of the 21 Mega-Broker Directors:

- 4 come from 2 office firms.
- 5 come from a 4-6 office firm.
- 3 come from a 9-10 office firm.
- 4 come from an 11-15 office firm.
- and 5 come from a 25-37 office firm.

The Mega-Broker voting bloc is 21 members strong, on a Board that only requires a majority of 17 to have its way. In reality, any office that is over 15 associates in strength, is likely to benefit from the ability to (ab)use Designated Agency, which means that the bloc that would be likely to vote for the concept is probably closer to 25 Directors.

This means that the small brokerage shops, which do not benefit from Designated Agency in the way that larger offices do, has no ability whatsoever to keep the WRA from engaging in the promotion of Designated Agency as the potential representation that they have on the Board is a mere 5 seats. Further, these Directors are constrained by WRA By-Laws, from speaking out against the Association if they disagree with the policy.

What this means to you small brokerage shops is that, even though you pay your dues, the WRA is set up in such a way as to remain firmly in the control of the Mega-Brokers and/or the Director

Agents who have fiduciary responsibilities to them, as agents of a Mega-Broker firm. Your voice does not count.

This issue, while truly being damaging to Wisconsin home buyers and sellers, is equally damaging to you, as it gives an anti-competitive tool to the Mega-Brokers to siphon away business from you. Their goal is to make us all the same under the law, so that s/he who has the bigger advertising budget wins.

Don't despair yet, though, small brokers and associates.

You have a way to have your voice heard on this issue. You have a way to stand up to the monopoly power being exerted by the WRA on behalf of its Mega-Broker constituencies and against YOUR best interests.

If we cannot be heard within the organization...we do have ways of focusing our voices and being heard outside of the organization.

Stay tuned...your way to focus your voice is about to be unveiled.

Meanwhile, contact your legislators to voice your opposition to Designated Agency. You can find out how to contact your legislator to register your opposition to Designated Agency by going to:

<http://www.legis.state.wi.us/wamltest/>

Next Up: "Debunking Designated Agency" What the WRA didn't tell you in their Designated Agency Update. A point by point rebuttal and/or fuller disclosure of the facts they conveniently leave out. More on how it adversely affects consumers, small real estate companies and individual associates within mega-broker firms, too

On Deck: Establishing REAL-Reform (Real Estate Agency Law-Reform) as the official movement to counter the Wisconsin Realtors Association's attempt to pass their Designated Agency concept into law.

--
Sincerely Yours,

Jay Reifert, Broker/Owner*****Excel-Exclusive Buyer Agency
100% Homebuyer Representation*****5136 E. Hilltop Road
100% Of The Time*****Madison, Wisconsin 53711
South Central Wisconsin's ONLY***** (800) 928-9379, Toll Free
Full-Time Exclusive Buyer Agency Firm.*** (608) 273-8841, Office
Visit <http://www.true-agent.com> ***** (608) 273-8388, Fax Machine
or <mailto:true-agents@true-agent.com>

Check out our NEW website, at: <http://www.Buy-Madison-Real-Estate.com>

Subject: SPECIAL BULLETIN: Smoking Gun 1, A Consumer Speaks Out

Date: Mon, 11 Feb 2002 07:08:33 -0600

From: Jay Reifert <true-agents@true-agent.com>

Organization: Excel-Exclusive Buyer Agency

To: Oppose the WRA--Defeat Designated Agency <REAL_Defender1@true-agent.com>

[Format Change: From this message forward, the header detailing to whom these messages are being sent will appear at the bottom of the message and the message will begin with a short summary to allow you to more easily determine your level of interest in the current subject, with full details of the issue appearing directly beneath the summary. My sincere thanks to those of you who have made these valuable suggestions for making this a more reader-friendly service.]

List Removal Instructions: Reply to this Message With "Remove" in the Subject Line or Body of the Message. Governmental Officials and Their Respective Staffs Will Not Be Removed From This List.

SPECIAL BULLETIN: Smoking Gun 1, A Consumer Speaks Out

What you are about to see, is a signed letter that I just received from a concerned citizen in Middleton, Wisconsin. Prior to this February, I did not know this person...or know of this person. Her true story was provided to me in order to help clarify what can frequently happen in the world of real estate SALES.

Though it is her own, it is not very different from the stories I have been hearing from many other consumers over the past thirteen years.

As you read her story, keep in mind that nobody--myself included--is saying that real estate people should not be allowed to be salespeople. What those of us who care are saying, is that you should not allow a salesperson to call his or herself an AGENT, unless they are willing to embrace the higher standards that come with such a role.

Designated Agency, if approved, will give people like the licensee in this story free reign to engage in dealmaking, while falling back on the claim of having represented someone, or making claims that she was only trying to be fair to all parties.

Look at it this way, if you--as a person--were to be SUED by someone who had a grievance, real or imagined, against you, would you hire an attorney from the same firm to watch out for your best interests in that suit?

Or, if you were getting divorced from your spouse would you allow the same attorney...or even an attorney from the same firm, to represent your best interests against your soon to be former spouse?

That's really what we're talking about here. One firm, purporting to represent two parties with opposing interests in the same transaction. The only parties who stand to benefit in that situation are the licensees involved and moreover, the firm that will collect a fee on the buyer side and the seller side of the deal. (This is NOT collecting TWICE from each party, as misleadingly stated by WRA General Counsel Rick Staff in another correspondence. In each transaction there is a seller side fee, often three percent and a buyer side fee, also often three percent, which adds up to the oftenly charged fee of six percent overall.)

One final note before the letter. The licensee who is the main party in the true story you're about to read is someone I have known for almost thirteen years. She is a nice person. I like her as a person. She is also not very different from many of the licensees that I have met over the course of these many years.

She probably cannot even see that what she is doing, is wrong. That's because she is a salesperson...and not an agent. Nothing wrong with that, other than the fact that she should not be allowed to hold herself out as an agent, unless she is willing to subscribe to the mandate of agency, which is putting the interests of the client ahead of all others, including her own.

JR

My Recent Experience with Real Estate Agents in Wisconsin

February 9, 2002

In the last 5 months, I have been looking for a home or a lot to purchase, as my family considers a move to a new location within the area. During this time, I have enlisted the help of three different licensees, at different times, with little success. The last licensee I worked with nearly soured me on the whole experience. Several things this licensee said or did, made me question whether she was working for me or I was working for her!

During the first meeting with this person, we saw several properties based on listings that I had found via the Multiple Listing Service (MLS). However, from the beginning she said that I didn't need to look at the MLS or send her listings I found since she doesn't regularly check her email, and could find properties much sooner, as she often knows about properties before they go on the market. When I asked her if we could look at these "pre-listed properties" or drive by them, she said that was not possible. I had the immediate feeling that she was using these potential listings as bait in order to keep me as a customer.

Since she apparently could/would do no more than any other licensee I have previously met, I also mentioned that if I decided to purchase a home that she is listing, I would go with a different licensee to avoid conflict of interest issues. She said that all a buyer's agent can do is interpret for me--whatever that meant--and that under the law she is obligated to be fair to all parties. When I was adamant about wanting my own representative, she said that she could refer me to another licensee within her firm.

-----brief commentary from JR

When the licensee said "refer" what she did not say--and was almost certainly true--was that the licensee would charge her officemate a fifty to seventy-five percent referral fee on the buyer's side fee for letting the officemate "represent" this buyer. In all likelihood, this arrangement would never have been disclosed to RL.

-----end commentary from JR

Another problem I experienced is that she rarely called me on the phone, except to return my calls. She often insisted that, "nothing had come up," until I told her what I had found on the MLS. Sometimes, when I informed her of several new listings I was interested in seeing, she would say that she had seen them too, and wanted to talk to me about them. Once, when I left a message about wanting to see a particular listing, she called back saying she had already set up an appointment for that house. What a coincidence!

Later, during our second meeting, she introduced me to a builder who had an office in her building. When I asked for pricing information, she interrupted to say, "Oh it's in your price range". She didn't let the builder answer and she didn't tell me that if I did go with this builder, she would collect a nice commission from him (adding to the final costs of the house).

During our third and last meeting, we went to see three listings. One listing was a home I had found on the MLS, one was a listing that this licensee had just listed under her name, and one listing was two hundred thousand dollars over my price range. When I questioned her on the choice of that house, she said that SHE really wanted to get in to see it. When I admired the wooded lot behind the house, she said that if I wanted the house, I would need to sign with her as my buyer's agent to negotiate the price down. She followed up with that by suggesting that I would need to get my house on the market soon, and she could help me with that, too!

That was the last straw! This licensee was showing me listings she was listing, asking me to sign with her as a buyer's agent, and wanting to list my house as a seller's agent almost in the same breath. I not only felt pressured, but felt there was a serious conflict of interest in many of the courses of action to which she was seeking to expose me.

My next step was to follow the suggestion of a great book, entitled, "Your New House", by Alan and Denise Fields, by seeking out an Exclusive Buyer Agent. Since exclusive buyer agents only work for the buyer (they do not have seller listings), there is little possibility of conflict of interest and the buyer gets sincere representation.

There was only one last conversation I had with this licensee. When I broke off my professional relationship with her (though no contracts had ever been signed), she warned me that if I purchased any house I had seen with her, I would owe her the buyer's side commission under something she called "procurement."

It is my feeling, as this is something that would effectively take from me my right to decide for myself what type of agent I wanted to

have, that "procurement" should be disclosed to an affected party at the first meeting. By telling me of "procurement" after exposing me to the property, she completely destroyed my ability to trust her.

Ever the salesperson, before we ended that conversation she suggested that she could still represent me as a seller's agent when I put my home on the market, and furthermore, if I chose one of her listings she would help me and my buyer's agent negotiate a better deal with her sellers since she knows me. After hearing that I decided then and there never to consider her for a seller's agent or anything else.

It's a shame that more buyers and sellers don't know of the unscrupulous practices that can go on in the conflicted world of the seller/buyer real estate agent. It's an even greater shame that so many licensees can't see for themselves, how what they are saying, and doing, makes them appear as nothing more than salespeople who'll do anything to make a quick buck.

If Designated Agency is going to make it even harder to hold a licensee accountable, when they are already prone to engaging in wholesale deal-making, I don't know how any intelligent consumer could support such a plan. I certainly don't.

Sincerely,

RL
Middleton, Wisconsin

-----signature on file

Commentary

Again, while I like the person--as a person--who is the object of RL's displeasure, I do not, at all, like how she attempts to hold herself out as any buyer or seller's agent/representative. She's not.

What's worse, she has taken organized real estate's second biggest secret...topped only by the deceptiveness of our agency laws in Wisconsin and has attempted to use it against RL...the concept which this licensee misidentified as "procurement". The correct name for this concept is "Procuring Cause" and--now that buyers have the right to choose their own representation...it is pure EVIL.

Under procuring cause, a licensee who has accompanied a buyer to a property or otherwise "caused" that buyer to purchase a particular property, may be entitled to receive the compensation that would ordinarily flow to the buyer agent of the buyer's choice...ALL WITHOUT EVER TELLING THE BUYER THAT SUCH A CONCEPT AS PROCURING CAUSE EXISTED!

For instance, in RL's case, the licensee in question never told RL that by seeing a home with her that RL could be giving up her right to choose her own buyer agent later, until long AFTER RL had already seen the home with her...making it too late for RL to decline seeing the home with her. (You see, RL told the licensee that she was going to seek her own buyer's agent to pursue the home in question...and that's when the licensee told RL about Procuring Cause.)

It's also important to note that RL was working with this licensee as a customer...meaning that the licensee worked for the seller, not RL.

Furthermore, the licensee did not ever "mirandize" RL by providing her with the State of Wisconsin MANDATED Disclosure of Real Estate Agency form, nor did she ask RL and her husband to initial the form, also as required.

Everything that this licensee did, was geared toward protecting the licensee's interest, without ever giving RL the information necessary to protect herself from the licensee!

Procuring Cause is such a well kept secret, that most consumers would never believe, until they had been robbed of their ability to choose a buyer's agent of their own, that it could possibly exist. But, procuring cause and its anti-competitive, illegal effects are a scandal for another day.

The bottom line in this case is, Designated Agency is bad for consumers and allows--whether innocently or by design--licensees to use the law as a shield to protect their own self interests.

(Note to all you news gathering organizations on this list: I have been giving you insights into practices which are the business world equivalents of such events as Enron...the Savings and Loan Scandal of the 80's and just about any other scandal you may wish to name. Other than a few of you here and there who have given

some press to this issue, I have to ask myself, WHERE ARE YOU?
Please feel free to quote me, in context, at your desire. If you need
to establish context...give me a call. You do not do the consumers
of Wisconsin any favors by remaining silent on these issues. If
you think you are protecting me by not printing what I say...DON'T
PROTECT ME! I want the WRA to do something stupid, so that this
issue, if not solved in the here and now, will be taken up by the
courts and solved there. I have the truth, both legal and
otherwise, on my side.)

Please, contact your legislators to voice your opposition to
Designated Agency. You can find out how to contact your legislator
to register your opposition to Designated Agency by going to:

<http://www.legis.state.wi.us/wamltest/>

Also, PLEASE forward this message to everyone you can and please
also print it out--and distribute--to those who you know that don't
have email capabilities.]

[This message is going out to thousands of Wisconsin Realtors, almost
500 governmental officials--including all State Legislators and their
respective staffs, the Governor of Wisconsin and most candidates for
Governor of Wisconsin, the Attorney General of Wisconsin, over 425
Consumer Advocacy Groups and/or individual Consumer Advocates, over
285 Registered Wisconsin Lobbyists and over 190 Media Outlets.]

--
Sincerely Yours,

Jay Reifert, Broker/Owner*****Excel-Exclusive Buyer Agency
100% Homebuyer Representation*****5136 E. Hilltop Road
100% Of The Time*****Madison, Wisconsin 53711
South Central Wisconsin's ONLY***** (800) 928-9379, Toll Free
Full-Time Exclusive Buyer Agency Firm.*** (608) 273-8841, Office
Visit <http://www.true-agent.com> ***** (608) 273-8388, Fax Machine
or <mailto:true-agents@true-agent.com>

Check out our NEW website, at: <http://www.Buy-Madison-Real-Estate.com>

Subject: Designated Agency Update--Debunking the WRA's Deception

Date: Mon, 11 Feb 2002 07:08:50 -0600

From: Jay Reifert <true-agents@true-agent.com>

Organization: Excel-Exclusive Buyer Agency

To: Oppose the WRA--Defeat Designated Agency <REAL_Defender1@true-agent.com>

[Remember...what used to be the header of this message, has been shifted to the message footer.]

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Designated Agency Update--Debunking the WRA's Deception

This will be the last of the long emails. Unfortunately, due to the ongoing deceptions of the WRA, responding to all of the misleading points that they are making requires a considerable use of words for an adequate rebuttal.

What follows, are the pertinent portions of the text of the WRA's "Designated Agency Update" released on February 4, 2002. Only the portions which are misleading will be in this message, but you can view a full version of their piece to establish greater context, by going to:

<http://www.true-agent.com/More WRA Deception on Designated Agency.pdf>

> *"Staff, Rick -VP Legal Services" wrote:*

>

>

MEMORANDUM

>

> *Subject: Designated Agency Update*

>

> *Designated Agency Questions & Answers*

>

> *The Wisconsin REALTORS® Association's Designated Agency proposal was developed at the request of WRA members...*

What this should have said was, "at the request of WRA large brokerage house members...", as the proposed legislation is definitely not beneficial to the WRA's small brokerage house members.

> *by the WRA's License Law Committee, reviewed by the WRA's Legislative Committee*

Entities to which Mr. Reifert, with his consumer bias, was denied committee membership. Entities which are also controlled by the WRA's large brokerage house constituencies.

> *and the WRA membership at focus groups held throughout the state,*
Are there any small brokerages which received invitations to participate in such focus groups? What was the criteria used to determine where these focus groups would take place? Did they all occur at the offices of large brokerage houses?

> *approved by the WRA Board of Directors and presented to the REB for > review.*

That would be the WRA Board which is comprised of an overwhelming majority of large brokerage houses and mega-brokers, constituencies which are not friendly to, or concerned about, the needs of small brokerage houses...which make up a large portion of the WRA's paid membership base. Perhaps even a majority!

As for, "presented to the (Real Estate Board) REB for review", at least Mr. Staff did not repeat his earlier misleading statement in another correspondence which said that the REB supports the concept of Designated Agency.

> *All meetings were open to all WRA members and no person has been refused the opportunity to attend or comment at any meeting.*

Hard to be present to voice concerns when no invitation is offered to attend. These WRA "dog and pony" shows were put on for large brokerage houses and mega-brokerage houses via specifically arranged events for them and no meaningful effort was made to include small brokerage houses. (Any small brokerage houses wish to defend the WRA on this point?)

Incidentally...the reason why small brokerage houses should be concerned about the WRA's blurring of relationships and the impact that it has on true agency is that the small brokerage house is the one most capable of providing true, agency-level services without the larger risk of having a buyer/seller conflict of interest arise.

If you carry less homes, chances are good that you will be showing your clients homes that are controlled by other firms. If you are unlikely to have the listing for the buyer you are representing, then the likelihood of dual agency is greatly reduced...which means less conflicts of interest.

> *The concept of designated agency offers an alternative for parties and brokers who choose to avoid the reduction of client services that otherwise accompanies a dual agency relationship.*

Untrue. Layering Designated Agency over the top of Wisconsin's (hush-hush) facilitator law means that Designated Agency changes nothing. Consumer clients, who used to have the law on their side to protect their interests, were robbed in 1994 of the right to hold their agents/firms accountable and Designated Agency just furthers the deception.

> *Designated agency allows the broker and the broker's clients the option of having the broker designate one or more agents to act as the agent of the buyer and one or more other agents to act as the agent of the seller.*

In reality, "designation" per se, will rarely occur. The licensee who began as a "full-agent" for a party would be the one who automatically transitioned to "designated agent" for the party who was previously represented without conflict. However, many confusing permutations could come out of the ability to designate, driving the shell game further and further into confusing murkiness.

Also, remember that the FIRM benefits doubly, by having the ability to exercise influence and a certain amount of control over two parties in the same transaction. (Just as you wouldn't want to have an attorney from the same firm that is suing you representing you in the same suit...you shouldn't want a licensee from the same firm that is representing the other party representing you.)

> *In a designated agency relationship each agent assigned to represent a client provides full agency services to the client throughout the transaction. This benefits the consumer who would otherwise face reduced services in a dual agency relationship.*

Not in Wisconsin. In Wisconsin licensees are all statutorily defined as facilitators...mere paper-pushers. Without changes to the underlying laws, there can be no LEGAL representation of a client's best interests. The WRA is engaging in the height of hypocrisy by even beginning to suggest that adding Designated Agency to our current Statutes changes ANYTHING.

> *Can I still list and sell my own listings?*
>
> *Yes, brokers can continue to list properties and sell them. As before this may occur when one of a broker's agents has the listing and the listing agent or another of the broker's agents works with the buyer as a sub-agent. It may also occur when the company lists the property and has a buyer agency agreement with the buyer in a traditional dual agency relationship. Designated agency simply adds a new option for brokers and their clients without eliminating any prior practices.*

Or, put another way, you now have one more tool available to make it look like you aren't just a salesperson. Let's see, I can start out looking like an agent--well, at least if agency were an option in Wisconsin--and then I can transition into just about what ever I want, making the "client" think that I'm really doing something different when I'm not.

Any relationship would be acceptable to me, if the consumer was given disclosures before accepting ANY level of services from a licensee...even at an open house, making it clear what the different types of "representation" available in Wisconsin were. This is called seeking INFORMED CONSENT. The problem with the WRA and many state associations is that they craft disclosures that hide the truth to protect the business practices of

licensees...instead of protecting the consumer.

> *Do we have to use designated agency?*
>
> *No. Designated agency would be optional.*

Optional for the licensee. Again, as the consumer will be lacking the facts necessary to create their ability to give INFORMED CONSENT, the undisclosed, or underdisclosed implications of Designated Agency will serve to benefit only the licensees in the transaction and, of course, the firm that collects a fee from the buyer side and the seller side.

> *Do we have to use it in all transactions?*
>
> *No. Just like dual agency, the parties in some transactions may*
> *decide that designated agency is a good way to proceed while in*
> *others the parties may prefer to handle the agency relationships*
> *in another way.*

See the immediately preceding reply and concentrate on the lack of INFORMED CONSENT by the consumer.

> *What role does the broker/owner play in a transaction with*
> *designated agency?*
>
> *The broker/owner would be the one to appoint one agent to be*
> *the designated agent for the seller and one agent to be the*
> *designated agent for the buyer. The broker/owner would owe the*
> *duties owed to a customer to each party - the broker/owner would*
> *treat each party as if they were customers as far as fiduciary*
> *duties.*

Setting aside the fact that fiduciary duties have no meaning in Wisconsin due to the Agency "Reform" Act of 1994, which turned all Wisconsin licensees into facilitators and was drafted by none other than Rick Staff, the current architect of Wisconsin's deceptive Designated Agency shell game, has anyone given any thought to the fact that the Broker...who is supposed to be supervising the two licensees that he or she designates, will not be able to give any advice to these licensees or their clients that would be contrary to the best interests of either party? (The broker remains a dual agent.)

Considering that there are MANY part-time licensees in the business who do not necessarily have the same level of experience/expertise as the ten percent--or so--of licensees who are very experienced, has anyone given any thought to the need to disclose to a client that they have engaged the services of a "rookie" or "part-time" licensee...and no longer have the entire firm's resources to draw upon to watch out for them under the concept of Designated Agency?

Designated Agency is a tool to benefit mega-brokerage houses and large office brokerages. It is not a tool to benefit consumers.

> *Do buyer and seller have to consent to designated agency?*
>
> *Absolutely. A client would consent either in the agency agreement*
> *the client signs (listing contract or buyer agency) or in a written*
> *consent to designated agency that can be given later on - the same*
> *as it is now for a consent to dual agency.*

Consent means nothing unless it is INFORMED CONSENT based upon a full presentation of the facts of all available agency relationships. Further, from the number of clients/prospective clients who come to me, telling me that they have never seen the Wisconsin State-Mandated Disclosure of Real Estate Agency form, let alone be asked for their initials on the form...the likelihood that they will receive--and have explained to them--a copy of the confusing, misleading form that the WRA is likely to produce, is very limited. (The current form is purposely confusing and misleading and hardly ever given to customers.)

> *Can buyers or sellers refuse dual or designated agency?*
>
> *Absolutely. Agency relationships are not automatic. Each consumer*
> *is always free to choose whatever agency relationship is best for*
> *that consumer and transaction. Consumers who feel more comfortable*
> *working with an agent from a different company always have that*
> *option.*

Again, without adequate disclosure and INFORMED CONSENT...the consumer is not free to choose whatever "agency" relationship they wish...because they are not informed of every available agency option, nor are they given the full details/ramifications of their choices with regards to the incomplete options that are presented to them.

What's more, due to the antiquated and EVIL Realtor-abused concept known as Procuring Cause, something else that is rarely explained to consumers, any property seen by the consumer with a licensee who then chooses to refuse designated agency, may not be able to find a buyer's agent to represent him or her, because Procuring Cause could keep the newly retained buyer's agent from being able to get paid...or remain paid.

Why? Because Procuring Cause, organized real estate's second biggest dirty little secret, says that the first licensee may be entitled to keep the fee that would have ordinarily flowed to the newly hired buyer's agent in through the transaction! Thus effectively taking away from the buyer the ability to choose a real buyer's agent to watch out for him or her.

And, under the vast majority of circumstances, none of this was ever disclosed to the buyer in advance of seeing property with the licensee who wanted to reserve the right to transition into a Designated Agent. Tell me...who benefits from Designated Agency? Who benefits from Procuring Cause?

> *What do the buyer and seller gain by using designated agency?*
 >
 > *The parties who choose designated agency over dual agency receive*
 > *the full services of the agent designated for them. The designated*
 > *agent owes all the duties owed to a customer and all of the duties*
 > *owed to a client.*

Doublespeak! In Wisconsin, this means that they gain nothing new, as our Statutes and rules make all agents facilitators...even under Designated Agency. In fact, in what is an absolutely amazing admission even farther down this page, Mr. Staff, the WRA's chief legal counsel admits that Designated Agency is a form of...DUAL AGENCY!

Let's see...how can we deceive the consumers of Wisconsin today?

Let's give them canned cat food and call it caviar. Then, for good measure, let's add the title of "new and improved". Designated Agency...canned cat food or caviar?

> *What do a buyer or seller lose by using designated agency?*
 >
 > *Some parties in a few situations may feel more comfortable working*
 > *with agents from different companies - an option that is always*
 > *open to them.*

See earlier statement about buyer losing their right to choose another agent...due to procuring cause. Further, what the WRA defines as "a few situations" would be in MOST situations, if full disclosure and informed consent were required.

> *What happens if the same agent is appointed as the designated agent*
 > *for both the buyer and the seller?*
 >
 > *That agent may work for both parties as a traditional dual agent. If*
 > *this is not acceptable to the parties, one client and the broker may*
 > *amend the consent to designated agency for that client to name a*
 > *different designated agent, perhaps a manager or the broker.*

What??? While there is no doubt that the first half of the sentence above is an invitation to dual agency...naming the manager or broker as the other Designated Agent violates the requirement under Designated Agency that such a party not put the interests of one party ahead of the others. (Oh, what a tangled web we weave...)

> *Will designated agency eliminate any existing consumer protection?*
 > *No, all parties who agree to designated agency will be entitled to*
 > *all of the rights afforded under current law.*

Well...a little bit of full truth. Since Wisconsin is statutorily a facilitator state, where no licensee can function as a true agent without violating the law, the statement above is true. Hypocritical, given the stated purpose of bringing Designated Agency to Wisconsin...but true, nonetheless.

> *Will designated agency give brokers the opportunity to act*
 > *unethically, criminally or to charge double commissions (as one*
 > *individual argues)?*
 > *No, designated agency is a form of dual agency and to the extent*
 > *dual agents would violate their fiduciary duties and take advantage*
 > *of one or more clients, the same risk exists in designated agency.*

That's right everyone, chant along with me:

Designated agency is a form of dual agency.

Designated agency is a form of dual agency.
Designated agency is a form of dual agency.

It is a shell game. It is intended to keep the consumer from keeping their eye on the pea. It is smoke and mirrors. At least with dual agency, the LIABILITY ALL ACCRUES TO THE PRACTITIONER AND FIRM! If they want to engage in potentially risky behavior, under dual agency they have duties to the clients that keep them liable to one/both client(s).

When you give one firm the ability to purport to represent two parties in the same transaction, and they consent to such an arrangement, their ability to successfully hold the agent accountable--read that SUE--has just been drastically reduced or perhaps even eliminated.

The "double-fee" that Mr. Staff refers to is a willful distortion of an earlier comment. When a property is listed, it is at a certain percentage. When placed on the Multiple Listing Service, usually half of the amount of the full fee is offered to whomever brings the buyer. So, that means there is a buyer side fee and a seller side fee.

When one company can exercise influence and control over two separate parties in one transaction, there is both motive and--due to the parties' reduced ability to sue for redress under Designated Agency--opportunity to take advantage of clients in a way that was not previously possible under the more restrictive dual agency.

> However, Wisconsin has practiced dual agency and has maintained
> confidentiality with customers since 1993 and there is no evidence
> that Wisconsin licensees take advantage of their roles as agents
> to act criminally or collect double commissions. Nothing about
> designated agency will alter the fact that the real estate industry
> does not put their interests ahead of the interests of clients and > customers.

Dual agency has been available for practice under the common law of agency--Wisconsin's standard prior to 1994--for hundreds of years. Wisconsin did not invent the concept.

As for evidence of wrongdoing, it's hard to gather evidence of wrongdoing when the machine that operates the real estate industry in Wisconsin, the WRA, controls the disclosures that make it out to the real estate consuming public. They only tell consumers what they want them to hear.

I can guarantee you that the number of consumers who knew that the Agency "Reform" Act of 1994 had stolen their right to true agency level services is a very small number indeed.

What's even more entertaining, is that the premise for making the changes in 1994 were to ensure fairness to all parties. Talk about a "red-herring" issue. The common law of agency, according to the Restatement of the Law, Agency (Second) already makes an agent liable to third parties...read that customers, by requiring them to be fair and honest with such parties.

Wisconsin's laws were changed for one reason. The large brokerage houses saw the threat of specialization from companies that would offer exclusive buyer agency and exclusive seller agency as being threats against which they could not compete, without changing the laws to make all licensees the same. That was the reason for the Agency "Reform" Act of 1994 and that was when the WRA robbed every party who would be a client in the State of Wisconsin of the right to have true representation in a transaction.

Most of the Agency "Reform" Act of 1994 needs to be repealed, returning Wisconsin to true, common law of agency status. At the same time, true reforms can be made which will spell out what the different forms of brokerage relationships are in the State of Wisconsin.

The problem in all states has been one of licensees not disclosing at the first meaningful point of contact what all of the different possible agency relationships are. If this were done, then consumers could make their choices up front, and not be faced with the proposition of keeping a licensee whose status has changed later on, or trying to drop that licensee and find someone who will truly represent him or her...and that is unafraid of the potential consequences of Procuring Cause.

Folks, Designated Agency is anti-competitive, anti-consumer...and will do nothing but further harm to the reputations of Realtors and their firms.

Lastly, for those of you who would decry my efforts as being self-serving, keep this in mind: My practice is based upon the common law of agency, which mandates that I am to put

the interests of my client ahead of all others, including my own. Any other standard is a compromise.

While it is true that my business benefits from Wisconsin being a common law of agency state, the difference between my position, and that of the WRA is that what benefits me, also benefits my client...and vice versa. Any other business model is based upon sales over service and that puts the focus on the wrong thing.

Next Up: Establishing REAL-Reform (Real Estate Agency Law-Reform) as the official movement to counter the Wisconsin Realtors Association's attempt to pass their Designated Agency concept into law.

On Deck: REAL-Reform exposes the offices of two State legislators for their documented refusal to watch out for the citizens of the State of Wisconsin on this issue...and then retells the heartwarming tale of how Speaker Jensen owes his first political victory to the eleventh hour campaigning of members of the Wisconsin Realtor's Association. (Speaker Jensen is reputed to be the legislator who will introduce/sponsor the Designated Agency legislation.)

Please, contact your legislators to voice your opposition to Designated Agency. You can find out how to contact your legislator to register your opposition to Designated Agency by going to:

<http://www.legis.state.wi.us/wamltest/>

Also, PLEASE forward this message to everyone you can and please also print it out--and distribute--to those who you know that don't have email capabilities.]

[This message is going out to thousands of Wisconsin Realtors, almost 500 governmental officials--including all State Legislators and their respective staffs, the Governor of Wisconsin and most candidates for Governor of Wisconsin, the Attorney General of Wisconsin, over 425 Consumer Advocacy Groups and/or individual Consumer Advocates, over 285 Registered Wisconsin Lobbyists and over 190 Media Outlets.]

--
Sincerely Yours,

Jay Reifert, Broker/Owner*****Excel-Exclusive Buyer Agency
100% Homebuyer Representation*****5136 E. Hilltop Road
100% Of The Time*****Madison, Wisconsin 53711
South Central Wisconsin's ONLY***** (800) 928-9379, Toll Free
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Visit <http://www.true-agent.com> ***** (608) 273-8388, Fax Machine
or <mailto:true-agents@true-agent.com>

Check out our NEW website, at: <http://www.Buy-Madison-Real-Estate.com>

Subject: Candidate for Governor is First to Back Wisconsin Consumers

Date: Mon, 11 Feb 2002 10:49:25 -0600

From: Jay Reifert <true-agents@true-agent.com>

Organization: Excel-Exclusive Buyer Agency

To: Oppose the WRA--Defeat Designated Agency <REAL_Defender1@true-agent.com>

[Note: In spite of the similarities between the names REAL-Reform (Real Estate Agency Law Reform) movement and the Reform Party, there is no affiliation between the two organizations. REAL-Reform does not endorse political candidates...and would encourage all other candidates for any office to examine the issue of Designated Agency and to join in the fight against Designated Agency and other deceptive Wisconsin real estate laws/practices endorsed or created by the Wisconsin Realtors Association, such as the Agency "Reform" Act of 1994.]

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FOR IMMEDIATE RELEASE:

Reform Party Candidate for Governor First to Back Wisconsin Consumers

Entrepreneur, businessman, attorney, teacher, lecturer, mentor, legal scholar, community leader and Realtor...Alan Eisenberg--the Reform Party USA/Wisconsin candidate for Governor--has the ideas to make Wisconsin Government more accountable to the CITIZENS of this State and has the tenaciousness and drive to carry those ideas out.

In a phone conversation yesterday evening with Jay Reifert, Organizer and Director of Operations of REAL-Reform, (Real Estate Agency Law-Reform), Candidate Eisenberg wholeheartedly backed a repeal of the Agency Law "Reform" Act of 1994 and further went on record as opposing any form of Designated Agency in the State of Wisconsin.

When asked why, Mr. Eisenberg stated, "Because there's no truth to either one of these schemes. What the Wisconsin Realtors Association called "Reform" back in '94 was just a bunch of good ol' boys getting together to protect their turf. They saw buyer agency coming and knew that if they didn't remake the laws to fit their practice, they were going to start losing business."

"So, what'd they do? They took away the rights of every last Citizen in Wisconsin to have real representation from an agent in a real estate transaction. Took it away by making them all facilitators...paper pushers. In my book that's criminal. Take something like that away from people and then pretend that nothing's changed."

"Now, here they come with another grand plan...this Designated Agency thing and all that's going to do is make it harder than ever for a client to hold their agent and firm responsible."

"If I'm elected, one of the first things I'll work to do is to repeal the Agency "Reform" Act of 1994 and make sure that, if it passes, Designated Agency gets the boot, too. Maybe I'll even open up an investigation of the Wisconsin Realtors Association to see if they're acting in concert to limit competition in the marketplace. Sure seems to be a whole bunch of suspicious coincidences going on."

To learn more about Gubernatorial Candidate Eisenberg and/or the Reform Party USA/Wisconsin, you can visit:

<http://www.AlanEisenberg.com/>

<http://www.reformpartywi.org/>

<http://www.reformparty.org/>

or, for further information, contact:

Pat Owens, Press Secretary
(262) 642-3388

[Reminder: REAL-Reform does not endorse candidates for public office. Any other candidate wishing to go on the record against the scam concept of Designated Agency or the confusing, convoluted Agency

NOTE: REAL-REFORM
does NOT endorse
candidates for political
office.
Some people missed that
fact in this message...even
though it was set out in
the text of the message
TWICE.

"Reform" Act of 1994 , can contact Mr. Reifert in any of the fashions found below.]

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Subject: Conflict of Interest Exposed--State of Wisconsin Real Estate Board Shills for WRA

Date: Fri, 15 Feb 2002 01:03:10 -0600

From: Jay Reifert <true-agents@true-agent.com>

Organization: Excel-Exclusive Buyer Agency

To: Oppose the WRA--Defeat Designated Agency <REAL_Defender1@true-agent.com>

[Before going to the heart of this message, you may find an article on the battle over Wisconsin Designated Agency, done by Inman News--a nationally-known internet real estate publication--to be interesting. You can see it at:

<http://www.inman.com/InmanStories.asp?ID=28408&CatType=R>

If it doesn't work, you can also try <http://www.inman.com> , click on "Main News Page" at the left and then scroll down until you find "Duel Agency" Proposal to allow 'designated agency' under fire in Wisconsin...

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Conflict of Interest Exposed--State of Wisconsin Real Estate Board Shills for WRA

Did you ever wonder who watches out for home buyers and sellers in the State of Wisconsin? Naturally, you might be inclined to think that it's the Wisconsin Real Estate Board, as that is the quasi-governmental entity that--on the surface--should fill such a role.

You would be wrong.

As created under the law, the Wisconsin Real Estate Board is made up of seven members. FOUR from the real estate industry and three from the general public.

See:

http://www.true-agent.com/no_consumer_protection_via_Real_Estate_Board.pdf

Let's see, that means that if the industry members vote as a bloc, the consumer members can never overrule them on matters of Board Policy, such as support for legislation.

This would be roughly akin to allowing Enron to stack the US Energy Department with enough Enron employees to dictate policy, so that Enron could ensure that consumers and citizens had someone who knew the industry, that was there to watch out for them.

Watch out, indeed!

So, when an entity like the Wisconsin Realtors Association DRAFTS legislation that it wants to see passed by the legislature, which allows for an immense conflict of interest that can adversely affect the Citizens of Wisconsin in its own right...and then passes it on to the real estate industry controlled Wisconsin Real Estate Board for rubber-stamping...you have to ask yourself, HOW DID THIS EVER HAPPEN?

Consider this:

The four real estate industry members of the Wisconsin Real Estate Board are:

1) Mr. James R. Imhoff, Jr. , Madison

Mr. Imhoff was a, if not the, driving force behind the Agency "Reform" Act of 1994 and has been a, if not the, driving force behind the proposed Designated Agency legislation, as well.

Interestingly, in the early 1990's, Mr. Imhoff was exceptionally opposed to the acceptance of buyer agency in the State of Wisconsin. Of equal interest, was how his support for buyer agency radically changed, once he managed to help nullify the common law of agency in Wisconsin, making it so that true buyer agency was less of a threat to his market domination plans.

Mr. Imhoff is the Chairman of First Weber Group, Inc. which has, according to data from the National Association of Realtors, NAR,

25 separate First Weber offices and by Mr. Imhoff's admission, 325 licensees between those offices. Mr. Imhoff is what is known in the industry as a Mega-Broker. He also controls 3 seats on the Board of Directors of the Wisconsin Realtors Association, the entity that is promoting their Designated Agency scheme to the legislature.

Mr. Richard Hinsman, Racine

Mr. Hinsman is the Broker/Owner of Hinsman Realty, Inc. According to NAR records he has four associates. On the surface, this would make Mr. Hinsman appear to be a "wildcard" vote...one who could fall either on the consumer's side...or the Mega-Brokers' side.

It would be interesting to know Mr. Hinsman's previous Board affiliations and whether or not he had ever held any management or ownership positions with any Mega-Brokerage houses. Regardless, he was likely chosen for his pro Mega-Broker leanings.

Mr. Richard A. Kollmansberger, Oconomowoc

Mr. Kollmansberger has an ownership interest in First Realty, GMAC. According to NAR records, he has six offices with a total of about 94 associates. Mr. Kollmansberger controls one seat on the WRA Board of Directors and, as a Mega-Broker would directly benefit from the passage of Designated Agency into law.

Ms. Nancy Gerrard, LaCrosse

Ms. Gerrard has an ownership interest in the realty firm Gerrard-Hoeschler which has--according to NAR records--five offices and about 46 associates. As a Mega-Broker, she would benefit directly from the passage of Designated Agency into law.

Quite frankly, this is a ridiculous state of affairs. It is bad enough that the Wisconsin Realtors Association can virtually write its own laws...but to have the entity that should serve as a crosscheck on that totally abusive Realtor power also be under the control of Realtors is unbelievable.

The Real Estate Board should be there to act as a voice for consumers...not the industry. REAL-Reform submits that a better way to have the apportionment on the Real Estate Board would be to have FIVE members from the general public and only TWO members from the real estate industry.

At that point, it would require substantive agreement from the consumer representatives on the Board that a Realtor-backed proposal had merit and was worthy of support, rather than have the Board serve as a rubber-stamp for the Realtor agenda, which--in this case--is extremely anti-consumer and anti-competitive.

As things currently stand, the last bastion of defense for the consumer in the State of Wisconsin--save the legislature, which has consistently given the WRA its way over the past several years--is the Department of Regulation and Licensing, DRL, itself.

So far, only Mr. Clete Hansen, Administrator of the Division of Board Services for the DRL has given any outward indication that he is interested in seeing the issue of Designated Agency receive due scrutiny...but, the likelihood of that happening is severely limited, as the Attorney in the Office of Legal Services who should be paying attention to this issue, Mr. William A. Black, told REAL-Reform that he was too busy to stay abreast of this issue and then subsequently requested to be removed from this network email list. (As one who is responsible for safeguarding the interests of Wisconsin Consumers, REAL-Reform refused to remove him, so that he would not be in a position to later deny knowing of the importance of this issue.)

Lastly, Secretary of the DRL, Oscar Herrera, has remained silent on this issue, too, causing more concern that the Citizens of Wisconsin are getting an underabundance of attention on this issue. Secretary Herrera...where are you? William A. Black, where are you?

So...where do we go from here? Well, there's always the courts.

Don't forget to check out the story on the Wisconsin Designated Agency battle at Inman News, a nationally known and respected internet real estate news portal. It was the top story in the NATION on Monday, February 11th. You can find it by going to:

<http://www.inman.com/InmanStories.asp?ID=28408&CatType=R>

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