

No dual representation

If a real estate salesperson tells you that he can represent you in your purchase and at the same time he is engaged by the seller to sell the flat. Ask yourself, whose interest will he be safeguarding?

It used to be a prevalent practice in the HDB resale market, with sellers' salespersons often collecting a commission from the buyer or refusing to sell to a particular buyer if there is no commission. This practice presents a clear conflict of interest. The sellers naturally want the highest price for their property and buyers would want to pay the lowest. The same salesperson cannot possibly discharge his professional duties to both equally and to represent both their interests fully.

The Council for Estate Agencies (CEA) has prohibited the practice of dual representation with effect from 15 November 2010. A salesperson cannot be appointed by both buyer and seller for the same property transaction. He can only act for one party. The same prohibition also covered the rental transactions. The ban on dual representation applies to all property transactions, including residential, commercial and industrial properties.

However, he may help the other party to do paperwork as long as it is clear to all parties that he is not acting for the other party and has obtained the consent of his client. Also, he cannot collect a fee from the other party for the paperwork rendered.

If a salesperson collects a fee from the tenant/buyer and also collects part of the fee from the landlord/seller, it will be a case of dual representation and is an offence under the Estate Agents Act.

In addition, a salesperson may not collect a commission from his client and collect a co-broke fee from the other salesperson representing the other party for the same transaction as there will be a conflict of interest.

So what is co-broking? Co-broking refers to the involvement of two or more salespersons in the property transaction. The salesperson should promote your interest and explain and advise you on the co-broking option in the Estate Agency Agreement to you. Co-broking is advantageous as it widens the exposure of the property to all salespersons and consumers. With more potential parties who may be interested, you may be able to get the best deal. The salesperson should not deny co-broking opportunities to other salespersons because of pre-identified salesperson/s whom he is only prepared to work with.

Case Study 1 – Salesperson A posted an advertisement of a flat for sale. A buyer responded to the advertisement and asked A to co-broke with his salesperson. However, A refused to co-broke and insisted the buyer to engage his partner B as the buyer's salesperson. The buyer declined the offer. A second buyer came along and the flat was sold to him, with B representing the buyer and A representing the seller. The first buyer was unhappy as he lost out the deal because he refused to engage B as his salesperson.

Case Study 2 – A salesperson advertised a property for sale and in the advertisement, indicated the words “already co-broke” and “1% commission – buyer”. It was targeted at turning away other salespersons and potential buyers who did not wish to engage any salesperson. The salesperson had intended to have the transaction handled only amongst salespersons in her team, and have different members of the team collect commissions from the seller and from the buyer. The salesperson had acted contrary to the interest of the property owner (seller) and brought disrepute to the industry.

The salesperson should not deny opportunities to others by adopting unacceptable practices such as advertising the property with phrases such as “buyers only”, “no agents”, “already co-broke” or other similar terms which are not in the interest of their clients.

The salesperson also cannot force someone to engage him and pay him commission if they are interested in the property. For instance, he cannot deny property viewing opportunity to a consumer who did not want to engage him. If the consumer is interested and does not intend to engage a salesperson, he can still try to participate and cannot be blocked from expressing interest or making an offer for the property.

CEA takes a serious view of salespersons who seek to block other salespersons or consumers from participating in the property transaction to the detriment of the client’s interest. CEA will take action against the errant salesperson.