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Current Issues Regarding Dual Agency and Conflicts of Interest for Real Estate Professionals

I. Issues When in Dual Agency and Acting as a Dual Agent.

When an individual real estate agent / licensee acts as a dual agent for both the buyer and seller, or landlord and tenant, in a residential or commercial real estate transaction, potential conflicts of interest and fiduciary duty issues can easily arise. This stems from the basic conflict between an agent's typical role as the zealous advocate on behalf of either the buyer or the seller, the landlord or the tenant, and its neutered role in a dual agency situation, when the sponsoring broker / real estate brokerage firm with whom the agent is affiliated, contracts with and represents the interests of both parties to the purchase or rental transaction. However, that being said, most States allow for dual agency, although each jurisdiction has its own specific limitations on and rules for engaging in dual agency, which apply to both the sponsoring broker / real estate brokerage firm and the individual agent.

Dual agency relationships generally can occur in one of two ways. A "single-agent" dual agency situation exists where an individual real estate licensee acts as agent for both the buyer and seller, or landlord and tenant, to the transaction (i.e., the me, myself, and I situation; a transaction involving only one agent / licensee who represents both parties thereto). This should be distinguished from that of a "two-agent" dual agency situation in which the same sponsoring broker / real estate brokerage firm represents both the buyer and the seller, or landlord and tenant; but, said broker / firm designates a separate real estate agent / licensee to representing each party's respective interests. Both forms of dual agency situations are prevalent throughout the United States; and, in each State there are governing licensing laws and regulations that address same.

The licensing laws and regulations impose far more restrictions on single-agent dual agents; and, thus, the agent's ability to engage fully in the representation of a buyer or seller, or landlord or tenant, is significantly hampered. In such situations, a dual agent can easily run afoul of the fiduciary duties that apply to a professional real estate agent when handling a real estate transaction. As an example, the fiduciary obligations of licensees (i.e., both salespersons and brokers) require full disclosure of specific information, as well as the safeguarding of the personal, financial, and confidential information of one client from disclosure to the other party to the transaction, who too is the agent's client. Typically, in a

"single-agent" dual agency situation (i.e., not designated agency), the individual agent is privy such confidential information from both parties to the transaction. For example, the agent may be aware of the highest price that a buyer is willing to offer on a property, as well as the seller's bottom line that it will accept for a sales price. Thus, how a dual agent deals with such confidential information, while still promoting the interests of each of his / her clients, is obviously of utmost importance.

Other dual agency issues beyond just negotiating the property's sales price may also arise during the course of a transaction. For example, a prospective buyer will often request that his / her buyer's agent provide the buyer with a recommendation for the engagement of a home inspector or more specialized expert to evaluate a property's condition. The inspector's findings may thereafter derail the entire purchase, or significantly impact the parties' ultimately agreed-upon terms of their transaction. In some States, a seller too may engage such a consultant, either prior to putting the seller's home on the market for sale or in direct response to a buyer's request to repair a problem or for a price reduction to address same. Thus, if both parties are represented by the same agent, the agent's response to their respective questions about when and whom to hire for property inspection related purposes can potentially raise a conflict of interest issue. As always, full disclosure to all parties is required.

A. Code of Ethics.

In analyzing the inherent problems involved with dual agency, a good starting point for any analysis thereof is with the 2018 Code of Ethics and Standards of Practice of the National Association of REALTORS®. While jurisdictional law ultimately controls, the Code of Ethics and Standards of Practice are guidance for an agent in meeting his / her ethical and fiduciary obligations while serving as a "single-agent" dual agent. Additionally, these principles govern in any potential ethical violation claim filed by a client, customer, attorney, competitor, etc. with a local or State Association of REALTORS®. Some representative provisions from the Code of Ethics and Standards of Practice are as follows:

Standard of Practice 1-5 states: "REALTORS® may represent the seller / landlord and buyer / tenant in the same transaction only after full disclosure to and with informed consent of both parties."

Standard of Practice 1-9 sets forth the obligations of the REALTORS® to preserve confidential information. Generally, those requirements are that confidential information of the client not be disclosed, and not be utilized by an agent to the disadvantage of its client.

Standard of Practice 1-12 states in part, as far as dual agents: "When entering into listing contracts, REALTORS® must advise sellers / landlords of: … 3. any potential for listing brokers to act as a disclosed dual agent; e.g., buyer / tenant agents."

Standard of Practice 1-13 states: "When entering into buyer / tenant agreements, REALTORS® must advise potential clients of: … 4. any potential for the buyer / tenant representative to act as a disclosed dual agent; e.g., listing broker for seller or landlord, seller's subagent, etc…."

Finally, Standard of Practice 3-4 addresses the issue of compensation disclosure.

Generally, the duty to disclose, which is based on the fiduciary relationship between a principal (e.g., the seller and buyer, or landlord and tenant) and an agent (i.e., the licensee and the sponsoring broker / real estate brokerage firm with which the salesperson / broker is affiliated), has been codified in the Restatement of Agency 2d, § 392, in comment b, which reads:

Disclosure. One employed as an agent violates no duty to the principal by acting for another party to the transaction if he makes a full disclosure of all relevant facts which he knows or should know, or if the principal otherwise knows of them and acquiesces in the agent's conduct. See Comment a on § 390. The agent's disclosure must include not only the fact that he is acting on behalf of the other party, but also all facts which are relevant in enabling the principal to make an intelligent determination, such as the prior relations between the agent and the other party, and the knowledge or lack of knowledge by the other party that the agent is acting for the principal. The agent, however, is under no duty to disclose, and has a duty not to disclose to one principal, confidential information given to him by the other, such as the price he is willing to pay. If the information is of such a nature that he cannot fairly give advice to one without disclosing it, he cannot properly continue to act as adviser.

B. Legal Requirements.

1. Differing State Rules.

The two overarching themes that can be derived from the Standards of Practice are the duties of: (1) full disclosure, and (2) maintaining confidentiality. These duties are codified and addressed in each State's licensing laws and regulations, which contain specific sections governing the practice of dual agency in a real estate transaction. Attached is a State-by-State survey of some of the relevant statutes and case law, which address the specifics of the duty to disclose and the requirements when acting as a dual agent.

Because of the inherent conflicts attendant to same, some States simply do not allow individual licensees / agents to act as dual agents. That being said, the majority of States do, in fact, allow dual agency, and have specific rules and procedures that govern the practice thereof. All of these States address the need for full disclosure, often requiring written consent from both parties to the transaction for "single agent" dual agency. Some jurisdictions are more restrictive than others. For instance, several States allow for dual agency, but significantly limit the role of the individual real estate agent to that of a neutral ("Switzerland"), which applies when the licensee has possession of confidential knowledge. In that instance, the licensee cannot use the confidential knowledge in any way; and, simply assists the parties in completing the transaction without negotiating same on their behalf. For example, California Civil Code section 2079.21, which is similar to other States, provides that a dual agent shall not disclose in any way a seller's willingness to sell at a price lower than the listing price, or a buyer's willingness to pay more than the offering price.

In essence, the most prudent posture for a dual agent to take is to fully disclose, and to confirm in writing, that he / she cannot be a zealous advocate on behalf of either party in contested negotiations; but, instead, will only be passing information back and forth between the parties, similar to what a mediator does in a lawsuit. The dual agent may then help the parties codify their basic agreements on price and other terms in a proper and binding legal document (e.g., offer, purchase and sale agreement), as contracts for the sale of land must be in writing to satisfy the Statute of Frauds.

Per Article 13 of the aforementioned Code of Ethics, REALTORS® must recommend that each party to a transaction hire a lawyer to protect his / her respective interests. Also, drafting contract language is engaging in the practice of law; and, therefore, must be undertaken by a licensed attorney. Accordingly, a real estate agent should not draft the parties' contract documents. Rather, at most an agent may

provide a client with a standard, boilerplate REALTOR® Association template contract for said client to complete with his / her attorney.
In most States, a dual agent must tread extremely carefully when faced with situations that involve confidential information or aggressive negotiations; and, instead, should simply help facilitate the parties with consummating their transaction. As an example, Rhode Island only allows dual facilitation where it is both fully disclosed that the licensee is a neutral facilitator and when written consent is obtained therefor. Michigan has a similar rule. The attached survey is, hopefully, a good starting point to learn the specifics of a jurisdiction's requirements in this regard.

2. Dual Agency Versus Designated Agency.

When it comes to a situation that is often termed "designated agency", as opposed to dual agency, several jurisdictions specifically state that same does not fall under the technical requirements of acting as a "single-agent" dual agent, but only apply as to the sponsoring broker / real estate brokerage firm, which represents both clients to the transaction. However, full disclosure of a designated agency situation should be provided to both the buyer and seller, or landlord and tenant. Additionally, the broker / firm should obtain in writing: (1) confirmation of said disclosure, and (2) consent to the designated agency situation. This is not only the best practice but also is often legally required by a State's applicable licensing laws and regulations. The distinction between a designated agent and a dual agent is that in the former, although the same sponsoring broker / real estate brokerage firm is representing both the buyer and seller, or landlord and tenant, each party to the transaction has its own separate licensee advocating for its respective position. Thus, most jurisdictions do not consider said situation to present potential significant conflicts. On the other hand, some States recognize that conflict issues may still arise in a designated agency transaction, since there is always a financial incentive for both the licensees and the brokerage firm to encourage the parties' completion of a transaction (i.e., for commission purposes).

The potential liability arising from a designated agency situation was addressed in the recent California Supreme Court case, *Horiike v. Coldwell Banker Residential Brokerage Co.*, 383 P.3d 1094 (2016). In that case, the same brokerage firm was involved, but Coldwell Banker Residential Brokerage had designated separate licensees to represent the buyer and the seller in the transaction. As such, when a dispute arose regarding an alleged failure to disclose inconsistencies in the total square footage of the property's living space, the Trial Court ruled that the sponsoring broker / real estate brokerage firm (i.e., Coldwell Banker Residential Brokerage) was not liable for the potential negligence or fault of its associated designated buyer's agent, since the buyer and seller were each represented by separate licensees affiliated with Coldwell Banker Residential Brokerage. However, both the Court of Appeals and the California Supreme Court later ruled that the brokerage firm (i.e., Coldwell Banker Residential Brokerage), which was in, and had agreed to the two-agent designated agency representation, was potentially liable as well, based on its overarching fiduciary duties to both of its clients (i.e., Coldwell Banker Residential Brokerage was in dual agency as to its buyer and seller clients).

Full disclosure of compensation obligations, and a potential difference in compensation when in a single-agent dual agency transaction, is not only important but also required under the Code of Ethics (e.g., a variable rate must be noted in Multiple Listing Service). In this regard, most States require a sponsoring broker / real estate brokerage firm to execute an Exclusive Right to Sell Agreement with a seller client, and many States similarly require the execution of an Exclusive Right to Represent Buyer Agreement between said firm and its buyer client. A description and explanation of how compensation is determined and to be paid must be discussed and confirmed at the onset of the client representation. As an example, Pennsylvania specifically requires that a written disclosure of the terms of the compensation being paid

to both the individual dual agent and the brokerage firm, must be provided to and signed by the parties to the transaction.

3. Property Ownership Issues.

A conflict of interest is inherent when the seller and listing agent involved in a transaction are one and the same. Similarly, specific rules exist for situations in which a dual agent is not only acting as the agent for both the buyer and the seller, but also is involved as the actual seller of the property in question (i.e., one individual wears the hats of seller, listing agent, and buyer's agent). Many States do not permit such a tri-role arrangement due to the inherent conflicts of interest involved with same (i.e., the seller / listing agent is obviously going to be only looking out for him / herself, to the detriment of the buyer). Jurisdictions deal with this situation differently; but, when allowed, full written disclosure and consent is required. The agent, who is also the seller, needs to be very careful to explain to the buyer that, while acting as a buyer's agent to help close the transaction, he / she is also negotiating on their own behalf as far as price and other terms of the parties' agreement. Additionally, when the listing agent is also the seller, the seller's "don't ask don't tell" disclosure obligation rises to the level of a listing agent, which is "must disclose all known material facts". For this reason, many sponsoring brokers / real estate brokerage firms have policies prohibiting these practices, even if allowed by law.

II. Necessary Steps and Procedures for Dual Agents.

A. Full Disclosure.

1. As explained above, full disclosure of all aspects of a dual agent's role and resulting limitations in a real estate transaction is crucial. In many States, agency disclosures (e.g., dual agency, designated agency, unrepresented customer) are mandated by the licensing laws and regulations; and, they must be in writing and signed by the client or customer, as applicable. And, in jurisdictions that require written real estate agency disclosure forms, the client must be clearly informed at the time of said disclosure that the agent may potentially become a dual agent in a transaction, which will then trigger the requirement for both parties to consent to the agent proceeding as such. When not so required, the simplest, and probably the most effective way of meeting that burden is to provide both the buyer and seller, or landlord and tenant, with a pamphlet or explanation in writing regarding dual agency; and, then, to have said two parties sign and date acknowledging receipt thereof. Regardless, the disclosure necessarily should cover all aspects of the potential conflicts of interest involved.

One obvious and important step is to explain to the parties to the transaction that any personal, financial and/or confidential information that they discuss with an individual dual agent may not, and will not, be used in any way in the negotiations for the sale of the property (e.g., price, motivation to sell). It is human nature that a client will expect and anticipate that his / her real estate agent will still, even in a dual agent situation, try to bargain a good price for them. Thus, this notion must be clearly addressed at the onset of the client relationship. In addition, a specific discussion of a dual agent's role and limitations should also be discussed with respect to each aspect of the transaction (e.g., home inspectors, financing, etc.).

Some States require a seller to complete a written property condition disclosure report at the time that the seller lists his / her property for sale. The seller's listing agent should have no role in the preparation thereof, as he / she has no first-hand, personal, actual knowledge about the property that the seller is listing for sale. Also, this disclosure form is a representation by the seller (not the listing agent) about the condition of the property for sale. At most, the listing should simply explain to the seller that the law

requires him / her to complete said disclosure form; and, then, instruct the seller to speak to his / her attorney regarding same.

One area of potential concern in a dual agent situation is when the licensee later becomes aware of a potential error in the seller's disclosure form, which information often comes to light following the buyer's home inspector's evaluation of the seller's property on the buyer's behalf. Because of the fiduciary duties owed by the licensee to both the seller and the buyer, the dual agent should simply bring the issue to the seller's attention and seek his / her response thereto. It may be that the seller merely made a mistake when originally completing the disclosure form. Or, perhaps the seller forgot about an issue from 15 years ago, which has not caused the seller any problems since. Conversely, the seller may have intentionally misrepresented information on said disclosure. At most, the listing agent can ask the seller to update / modify the "incorrect" information. However, if the seller refuses to do so, going forward, the listing agent has an affirmative disclosure obligation to "trump" the seller by disclosing the now known material fact to future prospective buyers.

As previously discussed, the Code of Ethics requires all licensees to recommend to both clients and customers that legal counsel be obtained to protect their interests; and, it also prohibits agents from engaging in the unauthorized practice of law (e.g., rendering legal advice, drafting contract documents, etc.). Thus, it important for a dual agent to inform each of the parties to the transaction that, because the agent is not an attorney, the buyer and seller, or landlord and tenant, should both discuss the sale / rental transaction with their own personal counsel. Further, a real estate agent's fiduciary duties do not include being "Joe Detective" for a client. For example, the onus is always on the buyer to conduct his / her own due diligence about the property that he / she is interested in purchasing. And, thus, it is not a buyer's agent's obligation to conduct research for a buyer client (e.g., reviewing records at a Building Department at Town / City Hall regarding whether or not a seller properly obtained permits for the seller's renovations to or addition to the property). The problem with this, obviously, is that the parties are often trying to save costs. Once again, these issues are exacerbated in a dual agency situation, where full disclosure is the proper way to handle things.

2. In addition to explaining the role of a dual agent in a transaction to the buyer and seller, or landlord or tenant, a licensee should also disclose to said clients the various options available other than dual agency. For example, should a listing agent have a buyer client who is ultimately interested in purchasing the listing agent's seller client's property, if the parties do not consent to a "single-agent" dual agent representation, the sponsoring broker / real estate broker firm can reassign one of said two clients to another agent affiliated with said firm, thereby creating a designated agency rather than a dual agency situation as to the individual agents involved (however, it will still be dual agency as to the firm itself). Accordingly, as required by law, or when / if necessary, a licensee must / should discuss with the parties their right to be represented by their own individual licensee in a transaction. Switching to designated agency will result in the client remaining with the same brokerage firm; however, the individual licensee will no longer be representing both of the firm's clients or acting as a dual agent.

Additionally, as indicated above, when acting as a dual agent, said licensee should recommend that the parties retain additional professionals to assist them with the transaction, as necessary (e.g., home inspector, mortgage broker, attorney, etc.) without any input therewith from the dual agent.

3. Parties to a transaction often raise questions about a possible reduction in the compensation to be paid to the individual agent(s) and/or the brokerage firm involved in same; and, when / if possible, they would obviously like to keep the costs of the transaction to a minimum. Consequently,

when obtaining clients' consent to act as a dual agent in a transaction, a licensee must disclose the implication thereof on his / her commission (i.e., the sponsoring broker / real estate brokerage firm and the individual dual agent will be entitled to the full commission paid by the seller, as there is no competing agent or firm accepting the listing agency's MLS offer of cooperation and compensation). A listing agent should seek to avoid a situation where the seller, at the closing table, for the first time raises a potential reduction in his / her contractual commission obligation because the listing agent was also the buyer's agent (i.e., a dual agent). In a dual agency situation, one of the motivating factors behind a buyer and seller actually agreeing to utilize a dual agent may be to keep the costs down; and, therefore, the specifics of that potential savings, along with the pros and cons of a dual agency situation, must be discussed in advance.

B. Best Practices to Minimize Risk and Potential Claims in Dual Agency Situations.

1. All agents, in advance of potentially serving as a dual-agent, must become knowledgeable and remain updated on their jurisdiction's requirements for acting as a dual agent. In doing so, agents must remember that the licensing laws and regulations stop at the State border; and, therefore, the practice in one State may differ vastly from than in a neighboring State where the agent is also licensed. Rules and regulations can and often do change, and agents must keep abreast of these situations. Furthermore, the best practice is for the sponsoring broker / real estate brokerage firm to either incorporate the required written disclosures and consents into their listing and buyer representation contracts, or to have pre-printed brochures and other documents available that set forth the jurisdiction's requirements, which the agents affiliated with said firm can then disseminate to clients and customers, as appropriate.

2. When acting as a dual agent, a licensee must tread very carefully when it comes to assisting in the preparation of the necessary purchase, rental and/or closing documents. Normally, a buyer's agent will provide the buyer with a REALTOR® Board fill-in-the-blank offer / purchase and sale agreement, to which the seller often times responds with changes or modifications thereto. In a dual agency situation, however, the agent must be mindful that he / she represents both parties to the transaction; and, thus, he / she is acting as a "neutral", a paper passer, a messenger, a conduit for information, Switzerland, etc. And, as always, a licensee cannot engage in the unauthorized practice of law. Thus, a dual agent may, and often must, raise certain issues with both the buyer and seller; but, in doing so, the agent is simply acting as a facilitator between the two parties who, in turn, need to address same with their respective lawyers. Further, given the limitations imposed on a dual agent, he / she cannot act as the zealous advocate of one client in resolving said issue(s) to the detriment of his / her other client. Also, as with any transaction, whether same involves a dual agent or not, once the parties agree on a specific term or condition of their transaction, they should confirm and memorialize same in writing, with the help of the own attorneys.

3. Finally, at the onset of any client relationship, when / if said client will have an obligation to pay a fee / commission to a real estate brokerage firm, the seller's / landlord's listing agent or the buyer's / tenant's agent must provide a full and complete breakdown of same in writing to the client such that the client can review, ask questions about, and agree to pay said fee / commission.

III. Managing Claims Brought Against Dual Agents and the Sponsoring Broker / Real Estate Brokerage Firm with which they are Affiliated.

A. As a claims adjuster, one should first determine whether or not a claim is even covered by the applicable policy, for which the named insured is typically the sponsoring broker / real estate

brokerage firm. Many MPL polices for real estate brokers have specific Professional Services definitions. At times, real estate owned by an insured (i.e., where the listing agent is also the seller) is excluded from covered Professional Services given the inherent conflicts of interest described above. Another potential claim involves a plaintiff alleging that an agent offered to help the client "improve" his credit score in the context of obtaining financing to purchase real property or a credit report in a rental transaction. Arguably, this does not fall within the Professional Services of a real estate agent; but, since there is often a duty to defend, a carrier may find that it is best to provide a defense to the claim anyway.

If the matter is covered, an adjuster should determine if the agent and insured entity are potentially adverse (e.g., where the agent: committed fraud, withheld materials information, etc.). When an agent fails to disclose to a client, customer, and/or his / her sponsoring broker / real estate brokerage firm that he / she was an owner, in any capacity, of the subject property (e.g., is the wife lifting agent married to the builder seller), a joint defense of the agent and firm is no longer possible due to the aforementioned inherent conflicts of interest involved with same. Retaining separate defense counsel for both an individual agent and the brokerage firm will obviously increase the expense incurred when defending a claim.

When dual agency is involved, an adjuster should determine whether dual agency (or some form thereof) is even permissible in that jurisdiction. If it is, then the adjuster should determine if the licensee / firm properly disclosed the dual agency situation to both parties to the transaction, and if they consented to same. If done correctly, depending on the nature of the claim, the insured may avail itself of this fact when defending against the claimant's allegations.

Many times, however, the facts and history of the transaction are not clear and/or there is no paper trail confirming the required disclosure and consent for acting as a dual agent; and, so, it becomes a he-said / she-said situation. Additionally, it may involve a per se statutory licensing violation for failing to obtain the requisite written authorization to proceed as a dual agent, which can then be used by a plaintiff in a subsequent civil action as evidence of the agent's / firm's breach of its fiduciary duties.

B. The best strategy is to try and resolve claims early. Given that the facts are often murky (e.g., many times there are no disclosures or consents in writing), a motion for summary judgment is unlikely to be successful. Also, the discovery process during the litigation may result in finding out unsavory facts about the agent. Further, even for relatively inexpensive properties, discovery and standard of care experts can rack up considerable legal fees and expenses.

Several coverage issues can prevent or slow down the resolution of a claim:

1. Disgorgement of a commission where the damages are not covered, and the insurer refuses to pay. If the commission was substantial, this can pose a large stumbling block.

2. If some of the services that were provided are not covered under the policy, then the insured may have to contribute towards any settlement. The insured entity is often reluctant to do this on behalf of an agent, despite it being the contracting party with the client and, thus, the brokerage firm is ultimately responsible for its associated agent's actions, if sounding in negligence (but, as noted above, not for fraud). Plus, agents are not always solvent, as their income source is entirely commission based (i.e., they get paid only when / if a transaction closes and the brokerage firm is paid).

3. Capacity arguments regarding whether or not an agent was acting on behalf of the insured entity may also arise (i.e., was the agent acting outside the scope of his / her independent contractor agreement with the sponsoring broker / real estate brokerage firm). This issue is very difficult to determine, as many firms fail to have their affiliated agents execute such an agreement, despite the fact that most States require same in order to exempt the parties from the State's employment laws. Or, a sponsoring broker may enter into a bare bones independent contractor agreement with a licensee, which fails to specify what the affiliated agent is authorized to do on the broker's behalf; and, since ambiguity is construed against the drafter, the brokerage firm may be hard pressed to argue that the agent was acting outside the scope of said agreement.

Selection of counsel is important. Not only does counsel need to be knowledgeable about the real estate laws in the specific jurisdiction at issue but also he / she must be familiar with the local community, judges, etc., as these issues can factor into how the insured entity and its affiliated agent will fair in Court (e.g., juries stereotypically do not like real estate agents; and, thus, a bench trial is usually the preferred course of action).

It is important for counsel and the adjuster to work together, since these matters are expensive and can be difficult to resolve. In addition, when there is a coverage issue, defense counsel needs to be aware of, but be careful not to become involved in, said coverage matter.

The best practice is to DISCLOSE EVERYTHING IN WRITING AND GET SAME SIGNED. Make sure that the parties are represented by separate counsel or at least have been told and advised IN WRITING to speak to counsel before entering into any sort of agency agreement or contract (e.g., lease, purchase and sale agreement). Recordkeeping is also vital; and, many States have specific laws governing the retention of documents. Often times said laws apply regardless of whether or not a transaction was ever consummated (i.e., a licensee / brokerage firm should not discard its records when a transaction falls apart).

It is imperative that large real estate brokerage firms keep track of what their affiliated agents are doing, which can be challenging given that said agents are independent contractors. At times, an agent may go rogue and its sponsoring broker can have no idea what is going on in the field. This may cause many problems including, but not limited to:

1. Initial failure to disclose by an individual agent.

2. Failure to obtain anything in writing.

3. Failure to keep any records.

4. Conflict between the agent and the corporate entity. If certain aspects are not covered (e.g., fraud), the corporate broker will require separate counsel; and, it and its affiliated agent will be adverse in their defense of the matter. These internal conflict issues are difficult for an insurer and the adjuster to handle, given the conflicts of interest. Oftentimes, multiple adjusters will have to handle different insured parties involved in any one claim.