



Corporate Real Estate Scope

California Supreme Court Case Challenges Ethics of Dual Agency

In what could become a precedent-setting case, the California Supreme Court has now heard the oral arguments that will scrutinize the long standing practice of dual agency by real estate firms. The case, *Horiike vs. Coldwell Banker Residential Brokerage Company* began on September 7th.

The original case was based on a dispute regarding the square footage of a property purchased by the plaintiff, Hiroshi Horiike. Horiike was represented by the same company marketing the property for sale, Coldwell Banker. But, the case has now morphed into an examination by the court of the practice of dual agency. The question of whether any one brokerage firm can really represent two different parties – buyer and seller or tenant and landlord – and provide “conflict free” representation to each side within the same real estate transaction will be examined by the court.

Dual agency has been a common practice in both residential and commercial brokerage firms where the parties to a real estate transaction are represented by an agent (or agents) from the same brokerage company. “This court case proves the point that tenant representation firms have been making for years, that lines can easily blur when an agency represents both sides of a transaction,” said William Strong, an ITRA Global corporate real estate advisor from San Diego. “It’s very clear to us that you can only advocate for one party in a lease or purchase, and so ITRA Global advisors choose to only work for corporate space users. This ensures our client’s interests are our top priority without question.”

Many of the world’s largest real estate companies both practice and encourage dual agency. CBRE, JLL, and DTZ/Cushman & Wakefield all represent property owners and sellers which are their primary clients and source of income. But, these same firms also represent corporate tenants and buyers in lease and sale transactions. In many cases, these dual agents are actually members of the same in-house leasing team that represents the landlords or sellers, so the opportunity for conflicts of interest is very high. Yet, these firms have long insisted that they have internal policies which mitigate potential conflicts of interest. “When traditional commercial real estate brokerage firms engage in dual agency, representing the owner or seller of property, while also representing the tenant or buyer in the same transaction, conflict of interest is inevitable. It’s simply impossible for one firm to act with absolute neutrality while representing the interests of two opposing parties with disparate interests” said Chris Carmen, President of Carmen Commercial Real Estate Services in Indianapolis. Carmen, whose firm only represents space occupiers added “The large traditional brokerage firms that practice dual agency will always reap the greatest compensation from on-going relationships with property owners as opposed to the one-time fee generated through representing a tenant. The broker or brokerage firm’s bias will always be in favor of the landlord or property owner, where they can glean the greatest benefit.”

With respect to a dual agent providing the same services as a designated tenant rep firm when representing a space user or tenant, Debra Stracke Anderson with the ITRA Global office in Washington D.C. added "When dual agency exists, it is far more likely that a tenant will be steered to a building that is managed or leased by the dual agent's company for one of their landlord clients. The listing agent's fiduciary responsibility is solely to the landlord, so the dual agent's incentive to aggressively negotiate on behalf of the tenant rather than the landlord is significantly diminished for fear of losing the listing and the lucrative business of the landlord client entirely. The dual agents keep the entire commission in-house, while providing a new tenant for their landlord client, viewing this as a win-win. However, we see it as a huge conflict of interest and certainly detrimental to the best interests of the tenant."

Ultimately the court's decision may impact both the disclosure practices and the bottom line of large commercial firms that practice dual agency. "Regardless of the outcome of the case, the mere fact that it is before the California Supreme Court shows that there are serious issues with these legacy real estate companies representing both sides of a real transaction. That is why corporate space users should be using a "tenant rep" only company, to ensure their interests are always the top priority of their broker," noted Strong.

For more information about this topic please contact Beth Wade, ITRA Global Executive Director, at 706.654.3201 or email bwade@itraglobal.com.

[ITRA Global](#) is an organization of real estate professionals specializing in representing commercial tenants and buyers in the leasing, acquisition and disposition of office, industrial and retail facilities. With coverage in major markets around the world, ITRA Global is one of the largest organizations dedicated to representing tenants and occupiers of commercial real estate. Clients benefit by having an experienced professional as their trusted advisor, providing conflict-free representation with total objectivity. To learn more about conflict-free representation and ITRA Global locations, please visit the ITRA Global web site.