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Legal Corner by Jay A. Goldstein

**Case Law Update:** A real estate brokerage should have a policy prohibiting its agents from personally using the brokerage's listing information to buy property. Otherwise, the court may find the brokerage in violation of the Consumer Protection Act (CPA) as an unfair practice.

The state Court of Appeals recently determined that a Bainbridge Island real estate brokerage violated the CPA, resulting in damages and almost \$51,000.00 in attorney's fees because an agent at the listing brokerage bought the property for \$45,000.00 and resold it for \$137,500.00.

The Court held that the brokerage violated the CPA although the agent was not liable.

To establish a violation of the CPA, a plaintiff must show: 1) an unfair or deceptive act or practice; 2) occurring within a trade or business; 3) affecting the public interest; 4) injuring the plaintiff's business or property; and 5) a causal relation between the deceptive act and the resulting injury. The brokerage had no policy prohibiting its agents from viewing offers on listed properties or from using the information to compete for property purchases. To the extent that offers by third parties were intended to be confidential, the lack of such a policy could be considered an unfair or deceptive practice.

According to the Court, since the brokerage routinely solicited sellers and purchasers, the brokerage's practice of allowing access to listing files may have the requisite capacity to deceive a substantial portion of the public. Sing v. John L. Scott, Inc., CA II, No. 18365-0-ii, 8/9/96.

The prudent broker should have a written policy addressing this issue to protect itself against lawsuits. With a written policy real estate agents who violate the policy may be vulnerable.