

## **REAL ESTATE AGENCY, REVISITED**

In an earlier article, we discussed briefly the new law of real estate agency to become effective January 1, 1997. Since then real estate agents and others have been scurrying to determine the effect of this new law on the real estate business. Questions arise especially regarding builders who are volume sellers and also licensees.

For example, the new law carries a presumption that the licensee is the buyer's agent unless the licensee is the listing agent, a seller's subagent, a dual agent, the seller personally, or the parties agree otherwise.

For a builder/seller with plats, the builder typically wants some control over the marketing. If a builder/seller employs a listing agent to sell the lots, a licensee of the listing brokerage would represent a buyer and could be at odds with the listing agent.

Another scenario could have the builder/seller who is also a licensee deciding to hang up the license in order to achieve the best price for the lots/homes. However, the seller/builder would then lose the services of the multiple listing service.

In other words the real estate agency business has been structured for years to sell the agency listings. Now agents for the same brokerage could be at cross purposes, one representing the seller, and one representing the buyer. Questions arise regarding the traditional courtesy between agents and brokers and whether such courtesies will continue.

On the other hand the new law clears up many areas that were troublesome for buyers, sellers and agencies. The Act specifically prescribes the duties of the parties to a transaction and the relationships between licensees and the public. The Act also eliminates common law rules in some areas, from vicarious liability to imputed knowledge and notice.

As is common with many new laws, we the public may not know how to interpret a certain section until the courts tell us. Stay tuned.