



Consumer Federation of America

DOUBLE-DIPPING BY REAL ESTATE AGENTS

**Risks and Costs to Home
Buyers & Sellers¹**

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¹ This report is one of a series on real estate brokerage. The other reports can be viewed [here](#).

Introduction

Double-dipped home sales, where one agent works with both home seller and buyer and retains the entire commission, is one of the most controversial practices in the residential real estate brokerage industry. In the past, many real estate agents have considered double-dipping (also called double-ending or double-siding) to be unethical, while other agents stopped short of this condemnation but were reluctant to engage in the practice. In a 2011 survey of more than 500 real estate agents, Inman News found that 26 percent viewed double-dipping as “unacceptable” while 32 percent said it was “not desirable.”²

Real estate industry critics of double-dipping have been vocal. A more recent Inman News article on the legal pitfalls of dual agency elicited the following comments from individual real estate agents.³⁴

- “In practice, I feel that it is nearly impossible for one agent to correctly handle and meet their fiduciary responsibilities.”
- “If consumers really understood it, they would never agree to working with a double agent.”
- “I tell my clients that a dual agency situation would be akin to sharing an attorney with your soon-to-be-ex-spouse in a divorce.”
- “I’m constantly amazed how Realtors don’t see dual agency and affiliated business relationships as a huge conflict of interest.”

Excessive Compensation: How, specifically, might double-dipping harm home buyers and sellers? First, since agents collect double or near-double the commission for a little more (and sometimes less) work, they can be grossly overcompensated.⁵ The residential brokerage industry is already under fire for charging high and near-uniform commissions of 5-6 percent of the home sale price.⁶ Critics ask for example: Are real estate services provided in the sale of a

² Matt Carter, “Dual agency and ‘double-dipping’ still risky business,” Inman (November 1, 2011).

³ Bernice Ross, “The legal pitfalls of dual agency in real estate,” Inman (January 16, 2017).

⁴ In the general press, double-dippers are often considered to be the only dual agents, yet scholars and some state laws define dual agency more broadly to also include sales involving two agents from the same firm. The latter in-house sales will be the subject of a future CFA report.

⁵ In some double-end sales, according to several industry sources, the agent will reduce the commission by a percentage point. Bill Gassett, “What is Dual Agency: Why Buyers & Sellers Should Avoid It,” Maximum Real Estate Exposure! (April 10, 2017), p. 13. Pete Gerardo, “Dual agency can cost you: Beware of ‘double agents’ when buying a home,” the Mortgage Reports (May 10, 2018). The extent of this discounting has not been researched though it would not be surprising for 6 percent commissions to be reduced to 5 percent.

⁶ See for example: “The Cost of Buying and Selling Homes Is Too High: Ending America’s Real-Estate Racket,” The Economist (February 15, 2020). See also: Mark S. Nadel, “Obstacles to Price Competition in the Residential Real Estate Brokerage Market,” Berkeley Business Law Journal, v. 18, n. 1 (2021), pp. 91-134, and his earlier article, “A Critical Assessment of the Traditional Residential Real Estate Broker and Commission Rate Structure,” Cornell Real Estate Review, 5 (2007).

\$500,000 home really worth the price of a new car or expensive medical operation? However, in most instances this commission is split between the listing agent and the buying agent.

Double-dipping agents could muster a defense of retaining the entire commission if they performed double the work of a listing or buyer agent but they rarely do. In fact, some agents have suggested that it is easier to work with both seller and buyer than with only one party and their agent. While there is more paperwork in working with the two parties, there is also much less hassle showing homes, coordinating with another busy agent, and negotiating a sale price.⁷ Double-dipping agents, while legally required to maintain neutrality, are in a position where they can influence both seller and buyer to agree on a sale price. Research has shown that they can and do use ploys such as strategic pricing and disclosure of confidential information to facilitate a sale.⁸

An economist would say that the double-dipping agents are collecting “economic rents,” in this case, compensation in excess of the value of the services provided. The two brokers who advertised “double-dipping for double commissions and 62 percent net profit” were clearly rent-seekers.⁹ Nationally, these economic rents could be substantial. Consumers pay real estate agents an estimated \$100 billion a year in commissions.¹⁰ Even if only 10 percent of transactions were double-dipped, their rents could total billions of dollars annually.

Conflicts of Interest: Conflicts of interest faced by double-dippers also have the potential to harm home sellers and buyers. The prospect of a double-ended sale can influence agents working with both sellers and buyers to steer their clients. Research on steering has focused mainly on buyer agents steering clients away from properties with low buyer commissions or to properties with high commissions.¹¹ However, the potential for double-dipping can also influence agents to steer clients to a double-ended sale. Buyer agents show clients their own listings first and disparage other properties of interest to these clients, thus potentially limiting the choice of properties by their client. Listing agents delay listing or showing their properties to clients of buyer agents while searching for their own unrepresented buyers, thus potentially depriving their clients of a quicker sale and/or a higher sale price.¹²

⁷ Robert Foley, “Why Do Agents Double Dip,” Flat Fee Real Estate (November 28, 2011). Gasset, “What is Dual Agency,” loc. cit., p. 3. Vrinda Kadiyali, Jeffrey Prince, Daniel H. Simon, “Is Dual Agency in Real Estate a Cause for Concern?” Johnson School Research Paper Series No. 08-07 (July 2012), p. 9.

⁸ Kadiyali, “Dual Agency,” loc. cit.

⁹ “Double-Dipping for Double Commissions and 62% Net Profit with Andrew Udem and Joe Sachetti,” podchaser (March 1, 2017).

¹⁰ Stephen Brobeck, “Hidden Real Estate Commissions: Consumer Costs and Improved Transparency,” Consumer Federation of America (October 2019), note 3.

¹¹ Panle Jia Barwick, Pasrag A. Pathak, Maisy Wong, “Conflicts of Interest and Steering in Residential Brokerage,” American Economic Journal: Applied Economics, v. 9, n. 3 (July 2017).

¹² See discussion in Kadiyali, “Dual Agency,” loc. cit. See also: Lingxiao Li, Bennie D. Waller, “Causation of Dual Agency Transactions? Buyer Choices or Broker Manipulation: Theory and Evidence,” unpublished article

Many double-ended sales result from a listing agent finding a buyer then persuading the seller to agree to dual agency, in which the agent ostensibly “represents” both buyer and seller. While most states require that sellers agree to dual agency, in reality few sellers object to the shift in their agent’s role from fiduciary to dual agent or facilitator.¹³ They are encouraged to do so by their agent, who explains that if they agree to dual agency, the sale can be made quickly. While most states require sellers to sign a form agreeing to dual agency, the document typically uses legal language and does not spell out what sellers lose by signing the document.¹⁴ These losses include the ability of their agent to advise them on any matter of interest to the buyer, including negotiation of a higher price and fewer concessions, such as required repairs.¹⁵

Home buyers working as customers, not clients, of listing agents also can be harmed. For many years, this customer relationship has originated from a potential buyer meeting a listing agent at an open house or from a buyer seeing a for-sale sign or property listing then contacting the listing agent. These contacts appear to have increased as consumers have increased their use of websites, such as those of Zillow and Redfin, that list a large majority of homes for sale.¹⁶ Particularly in a seller’s market, like the present one, some buyers appear willing to forego any type of representation (typically, dual agency) by listing agents.¹⁷ When buyers do so, those without attorneys are on their own in dealing with an experienced agent who is legally obligated to advance the interests of their seller clients. Without the advice and representation of an agent or attorney, these buyers may end up being charged a higher price for the home, receiving fewer concessions from the seller, and/or not being aware of problems with the property.

Few real estate agents and brokers try to defend double-dipping. One former realtor and blogger asks: “Someone tell me how the clients benefit from dual agency. Please. Just one example...”¹⁸ The most common defense is that one agent can help negotiate a speedier and easier settlement between seller and buyer.¹⁹ That increase in efficiency largely reflects a de-

(December 6, 2018). Dan Keeffe, “Why the Real Estate Dual Agency Concept is Evil,” Propy (August 17, 2019). Romana King, “Tricks Realtors Use to Sell Homes,” MoneySense (February 12, 2016).

¹³ Eight states prohibit dual agency but still allow a single agent to work with both buyer and seller. Ann Morales Olazabal, “Redefining Realtor Relationships and Responsibilities: The Failure of State Regulatory Responses,” *Harvard Journal of Legislation*, v. 40 (2003), pp. 65-132. Lingxiao Li, “Causation of Dual Agency,” *loc. cit.*, p. 3.

¹⁴ The ineffectiveness of disclosures is discussed by Olazabal, *loc. cit.* See also: Stephen Brobeck, “Why Required Real Estate Agent Disclosures About Representation Fail and How They Can Be Improved,” *Consumer Federation of America* (January 13, 2020).

¹⁵ A more detailed list of questions a dual agent cannot answer is found in: Gassett, “Dual Agency,” *loc. cit.*, p. 9.

¹⁶ For evidence of increased reliance of buyers on internet searches, see annual surveys of recent home buyers and sellers undertaken by the National Association of Realtors and published in NAR’s annual Profile of Home Buyers and Sellers. As one reporter found: “A surprising trend emerged almost everywhere in the country. When buyers call about a listing that is unavailable or unsuitable for their needs, they have no interest in hearing about other properties. Instead, agents are constantly hearing the refrain: ‘We’ll just contact the listing agent directly.’” Ross, “Legal Pitfalls,” *loc. cit.*

¹⁷ “For the first time in history, homebuyers are deliberately creating dual agency situations as many refuse to work with anyone but the listing agent.” Ross, “Legal pitfalls,” *loc. cit.*

¹⁸ Jay Thompson, “Why Dual Agency Should Never Happen,” *Inman* (November 28, 2018).

¹⁹ Thompson, *loc. cit.*

emphasis of the adversarial relationship between buyer and seller. This de-emphasis is also convenient for the double-dipping agent, highlighting their generous compensation.

Accordingly, there are many ways that double-dipping can expose a home buyer or seller to risks and costs. This report attempts to assess the extent of these risks and costs. Central to this assessment is consideration of new data on double-dipping from more than 6,000 home sales throughout the country. These and other data suggest that there is much cause for consumer concern yet also indicate significant differences in double-dipping rates that affect some home sellers and buyers more than others. The report then makes policy recommendations and offers consumer advice. It is organized into the following sections:

- Method
- Incidence of Double-Ended Home Sales
- Factors Influencing Double-Ended Sales
- Risks and Costs to Consumers
- Policy Recommendations
- Advice to Consumers
- Summary of Findings

Method

The report is based not only on a survey of existing scholarship, journalism, and industry comment on the subject, but also on research about recent, consecutive (reported) sales in 2021 of more than 6,000 homes listed on a local multiple listing service (MLS) in more than one dozen geographic areas.

- 500 recent sales reported by Realtor.com in each of ten cities – Providence (RI), Charlotte (NC), Orlando (FL), Birmingham (AL), Cleveland (OH), Chicago (IL), Oklahoma City (OK), Tucson (AZ), Oakland (CA), and Portland (OR).
- 452 sales in the city of Boston (MA) and 542 sales in the Minneapolis region (MN) from local multiple listing services.
- Several hundred sales in San Diego (CA), Orange (MA), city of Minneapolis, The Dalles (OR), McAlester (OK), and Laurinburg (NC).

The geographic areas were selected to reflect regional and demographic diversity. However, it should be noted that some areas, such as cities in Texas, could not be researched adequately because Realtor.com did not list agent(s) and/or price for their sales.²⁰ All home

²⁰ MLSs are allowed to exclude sale prices in Alaska, Idaho, Kansas, Louisiana, Mississippi, Missouri, New Mexico, North Dakota, Texas, Utah, and Wyoming. Andrea Brambila, “Controversial proposal,” Inman (April 30, 2021).

sales with a sale price and a listing agent in the selected cities were included in the study. The data did not reveal the precise relationship of the agent to the buyer and seller – as fiduciary agent to either the seller or buyer but not to the other party, as dual agent to both parties, or just as facilitator for the sale.

Industry sources assured us that Realtor.com faithfully reported sales data provided by multiple listing services.²¹ While private sales by owners are not reported to these listing services, these transactions are less than 10 percent of all sales and, since they do not involve agents, are not germane to this research. But what about pocket sales that initially are not listed on a local multiple listing service (MLS)?²² Industry insiders say that most of these properties are eventually listed, either just before or after the sale. The industry requires pocket-selling agents to MLS list a property within one day after marketing it to the public.²³ And, these agents often want public credit for their sales. Thus, it appears that a large majority of all recent agent-related home sales in the geographic areas studied were included in our sample.

In nearly all areas, Realtor.com reported some transactions without buyer agents. The explanation we received from a local MLS, from Realtor.com, and from Zillow is that these sales involved buyer agents who were not members of the reporting MLS, so there was no double-dipping. We believe that is certainly the case for the large majority of these sales, but we also think that in some double-ended sales where the buyer was a customer, not a client, the listing agent did not think it necessary or accurate to indicate that they were also the buying agent. If so, the actual percentages of double-ended transactions would be somewhat higher than those reported below.

Incidence of Double-Ended Home Sales

To our knowledge, there is no reliable published estimate of the incidence of double-ended sales nationwide. Most researchers who have addressed the topic have studied home sales in just one area and usually have not distinguished between in-house transactions involving one agent or two agents. There are some data on double-ended sales reported by individual listing services, usually in response to a journalist's request. A decade ago, Matt Carter wrote several informative articles for Inman News on dual agency and double-dipping. In one of these articles, he identified the percentage of double-ended transactions reported by two local multiple

²¹ We received related information from staffers of Realtor.com and the tech firm managing data for the San Diego Multiple Listing Service as well as from a couple of longtime realtors. Researchers using MLS data have noted, though, that the data are not always accurately and completely submitted by agents. See discussion in: Steven Levitt and Chad Syverson, "Market Distortion When Agents Are Better Informed: The Value of Information in Real Estate Transactions," *Review of Economics and Statistics*, v. 90, n. 4 (2008).

²² Lisa Johnson Mandell, "What is a Pocket Listing? A Sneaky Way to Sell Your Home," Realtor.com (December 6, 2016).

²³ Andrea V. Brambila, "Court Throws Out Pocket Listing Lawsuit against NAR and MLSs," Inman News (February 2, 2021).

listing services in 2010 -- 9.4 percent in the Arizona Regional MLS, and 10.1 percent in the Rockville (MD) MLS. He also wrote that from 2000 to 2010, double-ended sales never accounted for more than one percent of transactions handled by members of the Houston Association of Realtors, though the article did not make clear whether the numbers were based on sales as reported by the local MLS or, less reliably, by individual brokers or agencies.²⁴

While our research is not extensive enough to calculate a precise percentage for double-ended sales nationwide, this report provides useful information about the extent to which agents are double-dipping today. As the table below indicates, double-ended (DE) transactions ranged from 2.6 percent to 14.8 percent in the twelve areas where 500 or so recent sales were studied. The average rate of all 5,994 transactions examined was 9.4 percent. However, the most striking characteristic of these figures is their variance. In Boston, Providence, Birmingham, Cleveland, and Minneapolis (region), more than 12 percent of transactions were double-ended. Yet, in Charlotte, Oakland, and Portland, fewer than 4.5 percent of sales were double-ended.

Table 1: Incidence of Double-Ended Sales (n=5996)

City	Incidence Rate
Boston, MA	12.4%
Providence, RI	14.4
Charlotte, NC	2.6
Orlando, FL	10.8
Birmingham, AL	14.8
Cleveland, OH	12.8
Chicago, IL	6.2
Minneapolis, MN (region)	14.5
Oklahoma City, OK	9.0
Tucson, AZ	7.8
Oakland, CA	4.4
Portland, OR	3.2
Total	9.4%

Eleven of these twelve rates were for cities, and the twelfth was for the region of a large city. Would double-end rates tend to be higher or lower in less populated areas than in cities? We made five comparisons of recent, consecutive home sales that suggest the rates would be higher outside cities.

²⁴ Carter, "Dual Agency," loc. cit.

- Minneapolis city (n=100), 9.0%, vs. Minneapolis region (n=542), 14.5%
- Boston city (n=452), 12.4% vs. MA town of Orange (n=48), 18.8%
- Portland (n=500), 3.2% vs. The Dalles, OR (n=50), 10%
- Oklahoma City (n=500), 9.0% vs. McAlester, OK (n=50), 36%
- Charlotte (n=500), 2.6% vs. Laurinburg, NC (n=50), 30%

Given this information, we estimate a nationwide double-dip rate of around 10 percent.

Factors Influencing Double-Dipping Levels

Seeking to explain these double-end levels helps us to better understand double-dipping, especially whether these rates are influenced by factors such as fear of litigation, housing price levels, agent dispersion, seller expectations, and the priorities of real estate firms, teams, and individual agents. Despite the complexity of double-dipping practices and limited data to explain it, knowledge about double-ended associations and causes can be useful in developing policy responses and also formulating advice for home sellers and buyers.

Fear of Litigation: While lawsuits related to agent representation are not common, they are of concern to many agents and brokers.²⁵ Litigation won by plaintiffs can severely damage a broker’s pocketbook and reputation. Even a successful defense can be costly financially and also jeopardize reputation.²⁶ Widely publicized court cases on dual agency have reminded brokers and agents of the risks involved. The 2019 California Supreme Court’s decision in the case of *Horiike v. Coldwell Banker Residential Brokerage Co.* may have been particularly influential, especially on the West Coast. The court ruled that in in-house deals, a real estate agency has a fiduciary duty to both the seller and buyer. This decision was characterized by one real estate attorney as continuing the tendency of courts to “find liability against dual agents” and “again punishing a dual agent.”²⁷ While a second trial ended with a jury decision that Coldwell did not breach its fiduciary duty, the Supreme Court decision stands, and the defendant certainly suffered losses during the decade of the litigation, which has not ended -- the plaintiff is appealing the decision.²⁸ Fear of litigation and increased concern about the ethics of double-

²⁵ Nearly three-quarters of members surveyed by the National Association of Realtors in 2011 identified agency issues as one of the top three sources of disputes resulting in complaints and litigation. Matt Carter, “Legal pitfalls of agency representation for real estate professionals,” *Inman* (February 14, 2012).

²⁶ Ross, “Legal pitfalls,” *loc. cit.* Christopher Combs, “Dual Agency in Real Estate Transactions Presents a Problem,” *Combs Law Group* (February 4, 2019).

²⁷ Simon Offord, “Court Again Punishes Dual Agents,” *Real Estate Law Blog from Brewer Offord & Pederson LLP* (2018).

²⁸ *Horiike v. Coldwell Banker Residential Brokerage Company*, *Casetext* (September 25, 2019).

dipping may help explain some evidence that sales with dual agents have declined over the past 20 years.²⁹

Low Sale Prices: One can hypothesize that home sales with low sale prices are more likely to be double-ended than those homes selling for higher prices. These properties are likely to be less attractive to both listing and buyer brokers, giving agents more leverage in dealing with home sellers. A home sold for \$100,000, for example, would usually generate a total commission of \$5,000 to \$6,000. If the listing agent shared that commission with a buyer agent, they would most often receive only \$2,500 to \$3,000 in compensation for their services, and some agents are obligated to share this commission split with their broker or agency. Listing agents, then, may have greater interest in and flexibility to delay putting the home on the local MLS, not optimize the appeal of this relatively inexpensive listing,³⁰ and market the home to unrepresented buyers.

The figures in Table 2 below indicate that in almost all cities studied, both individually and in the aggregate, low-priced homes were much more likely to be sold by a single agent than by a listing and a buyer agent. Of the 932 homes in our sample that were sold for less than \$150,000, 16.5 percent of them were double-ended sales involving only one agent. That figure is roughly double the 8.1 percent rate of double-ended sales in the 5,062 transactions involving homes sold for \$150,000 or more. This statistically significant difference (at the 0.01 level) suggests that our hypothesis has some merit. However, it should be emphasized that only 27.3% of all double-ended transactions involved homes with sale prices of less than \$150,000. Other factors are also influencing double-dipping rates.

On the other hand, as Table 2 also indicates, those homes with a sale price between \$150,000 and \$299,000 were not more likely to be double-ended than were all other homes sold. The 8.8 percent double-end rate for these moderate-priced homes was even slightly lower than the overall double-end rate. While there were differences in the double-end rates between cities, these rates usually did not differ significantly from the overall double-end rate in each city, and some of these differences could reflect relatively small city samples. The Portland rate of 11.1 percent for \$150,000-\$299,000 homes, for example, was much higher than the overall Portland rate of 3.2 percent. Yet the sample of these homes was only 45, and none of the five Portland homes that sold for less than \$150,000 were double-ended.

²⁹ Lingxiao Li, “Causation of Dual Agency Transactions,” loc. cit., Table 4. These data, though, do not distinguish between dual agency sales involving one and two agents. A journalist reported declines in double-end sale rates during the end of the first decade of this century. Carter, “Dual Agency,” loc. cit.

³⁰ One way to reduce appeal of the property is by limiting the number and quality of photographs placed on the home listing.

Table 2: Double-End (DE) Rates on Low-Priced Homes Sold

City	Total	Sales Under \$150k			Sales \$150k-\$299k		
	DE Rate	Total	DE	% (DE/T)	Total	DE	% (DE/T)
Boston	12.4%	0	0	—	20	3	15.0%
Providence	14.4	31	9	29.0%	228	32	14.0
Charlotte	2.6	14	0	0.0	205	5	2.4
Orlando	10.8	70	18	25.7	188	20	10.6
Birmingham	14.8	175	30	17.1	177	18	10.2
Cleveland	12.8	377	53	14.1	97	7	7.2
Chicago	6.2	55	7	12.7	129	4	3.1
Minneapolis	14.5	67	20	29.9	239	29	12.1
Oklahoma C.	9.0	94	11	11.7	287	21	7.3
Tucson	7.8	44	6	13.6	285	24	8.4
Oakland	4.4	0	0	—	0	0	—
Portland	3.2	5	0	0.0	45	5	11.1
Total	9.4%	932	154	16.5%	1900	168	8.8%

High Sale Prices: One can also hypothesize that homes with high sale prices have high double-end rates. Listing agents of these properties might be tempted to search vigorously for an agent-less buyer in order to collect a very large commission – at a 5 percent rate, \$75,000 on the sale of a \$1.5 million home. They could well have an opportunity to do so if the seller were reluctant to have their home listed on the local multiple listing service. High-income sellers with expensive homes are most likely to be those seeking to avoid publication of the listing as well as numerous visits to their home, some by “open house voyeurs.”³¹ Critics of pocket listings have suggested that these listings are popular with some agents because of the increased opportunity to double-dip.³²

As Table 3 indicates, our data provide little support for this hypothesis. The double-end rates for homes with sales prices of \$600,000-\$999,999, and homes with sale prices of \$1 million or more, are both below that of the double-end rates for all other homes. It should be noted, though, that these two rates – 8.1% and 8.2% -- are not much lower than the average double-end rate. And, it is possible that double-ended sales of high-priced pocket listings are less likely than other sales to be listed on local multiple listing services, so not be reported to Realtor.com.

³¹ Aly J. Yale, “What Are Pocket Listings, and How Do You Find Them,” Million Acres (January 16, 2020).

³² Caitlin McCabe, “Exclusive ‘Pocket Listings’ Are Nothing New,” Philadelphia Inquirer (November 27, 2019).

Table 3: Double-End (DE) Rates on High-Priced Homes

City	Total	Sales \$600k-\$999k			Sales \$1m and Above		
	DE Rate	Total	DE	% (DE/T)	Total	DE	% (DE/T)
Boston	12.4%	180	18	10.0%	118	16	13.6%
Providence	14.4	33	6	18.2	18	3	16.7
Charlotte	2.6	54	1	1.9	29	2	6.8
Orlando	10.8	34	1	2.9	9	0	0.0
Birmingham	14.8	17	4	23.5	5	2	40.0
Cleveland	12.8	4	1	25.0	0	0	0.0
Chicago	6.2	73	6	8.2	30	6	20.0
Minneapolis	14.5	31	7	22.6	6	0	0.0
Oklahoma C.	9.0	15	6	40.0	5	0	0.0
Tucson	7.8	27	1	3.7	4	1	25.0
Oakland	4.4	207	9	4.3	166	4	2.4
Portland	3.2	141	6	4.3	25	0	0.0
Total	9.4%	816	66	8.1%	415	34	8.2%

Though unrelated to the topic at hand, we cannot help noting the extremes in housing prices. For example, three-quarters of the homes in Cleveland (75.4%) were sold for less than \$150,000 with only four homes sold for at least \$600,000 (and no homes sold for at least \$1 million).³³ By contrast, no homes in Oakland were sold for less than \$300,000 while three-quarters (74.6%) were sold for \$600,000 or more with one-third of all homes (33.2%) being sold for \$1 million or more. Birmingham also had a disproportionate share of low-priced home sales while Boston and Portland had a disproportionate share of high-priced transactions. These data on housing prices provide another illustration of the country’s economic inequalities.

Agent Dispersion: One might hypothesize that there is a direct relationship between agent dispersion (i.e., the ratio of people to agents) and double-dipping. If listing agents face less competition from buyer agents for clients, they could be more likely to find buyers who would work exclusively with them. We explored this relationship by computing a people/agent ratio, using 2019 US Census figures for area populations, and the number of agents listed by Realtor.com for that area. For our twelve urban areas, we first made comparisons using city populations and found no consistent relationship to the double-end rate. However, when we used the population of metropolitan statistical areas (MSAs), the area in which most agents practice, we did find a weak relationship (statistically significant at the 0.10 level). As Table 4 indicates,

³³ It should be noted that Cleveland is one of 49 municipalities in Ohio’s Cuyahoga County and that residents of the city have median incomes that are only about one-third of those in the rest of the county.

those cities with the highest people/agents ratio tended to have the highest double-end rate. The weak relationship may reflect the fact that, even in those cities with the highest population/agent ratios, there were still a relatively large number of agents. The median number of sales in 2019, according to an NAR realtor survey, was only 12. There is intense competition among many agents for most seller and buyer clients.

Table 4: Relationship of Population/Agent (P/A) Ratios to Double-End (DE) Rates for Metropolitan Statistical Areas (MSAs)

MSA	P/A Ratio	DE %
Boston	2,389	12.4%
Providence	2,001	14.4
Minneapolis	1,993	14.5
Cleveland	1,561	12.8
Oakland*	1,542	4.4
Birmingham	1,477	14.8
Chicago	1,271	6.2
Portland	1,164	3.2
Oklahoma City	1,082	9.0
Tucson	840	7.8
Charlotte	816	2.6
Orlando	560	10.8

*Used Alameda County rather than the MSA because the latter also includes East Bay communities with agents who do business mainly on their side of the bay.

Real Estate Agency Priorities: Do real estate agencies make it easier or more difficult for their agents to double-dip? Do they freely allow or even encourage double-ending, perhaps as an incentive to retain or recruit agents? Do they discourage this practice, perhaps because they view it as ethically questionable or because they want to encourage in-house sales involving two agents? Or are they agnostic on the issue, neither encouraging nor discouraging the practice? The data in Table 5, the percentage of double-end sales per agency in our sample, provide information relevant to this issue, which the agencies themselves rarely speak about publicly.

Table 5: Percentage of Double-End (DE) Sales for Real Estate Agencies*

National			Regional		
Firm/Brand	Sample Size	DE %	Firm/Brand	Sample Size	DE %
Keller Williams	709	9.4%	Long (Tucs.)	102	1.0%
RE/MAX	427	9.1	Edina (Minn.)	80	10.0
Coldwell Banker	273	9.9	Residential Properties (Prov.)	77	20.0
Compass	214	4.2	@properties (Chic.)	70	5.7
eXp	178	8.4	Tierra Antigua (Tucs.)	70	8.6
Century 21	124	8.9	Realty South (Birm.)	66	21.2
Sotheby's	122	4.1	Windermere (Port.)	45	0.0
Howard Hanna	82	8.5	Tate (Chic.)	41	0.0
Berkshire Hathaway	67	3.0			
HomeSmart	51	15.7			
Redfin	45	4.4			

*Only agencies with at least 40 sales in our sample are listed.

The most striking characteristic of these figures is their similarity for national agencies. Most of the national companies had a double-end rate that was within one percentage point of the overall sample average of 9.4 percent. This finding suggests that most national agencies do not strongly encourage or discourage double-dipping. Moreover, the lower figures for Compass probably reflects disproportionate sales in one city with a low double-end rate.³⁴

The greater variation in double-end rates for large regional companies is more difficult to explain. The two companies with double-end rates exceeding 20 percent – Residential Properties in Providence and Realty South in Birmingham -- both do business in cities with high rates, but the rates of these two firms are considerably higher than the rates for all other companies in their areas. These companies may give agents more opportunity to double-dip by, for example, not insisting that these agents promptly internally circulate or MLS post new listings. In contrast, the low double-end rate of Long Realty in Tucson may be related to their very high in-house rate of double-ended sales (31.4%). Might this company encourage or require agents to immediately circulate information about new listings to other Long realtors?

Priorities of Individual Agents: It is to be expected that some agents double-dip more than other agents. As shown earlier, some agents consider double-dipping to be unethical or inappropriate. In our earlier research, about one-quarter of listing agents we contacted (as

³⁴ Nearly half of Compass sales (104 of 214) were in low-rate Oakland.

potential home buyers) said they would not work with us but would refer us to another agent.³⁵ Among agents willing to double-dip: Listing agents, especially in a seller's market, would have greater opportunities to do so than would buyer agents. Also, some agents will more aggressively pursue double-dipping opportunities than will other agents. Double-dippers might, for instance, withhold information on new listings from other agents, even those inside their own agencies, and aggressively seek buyers for these homes by marketing their availability directly to those most likely to be seeking a home.

In our Realtor.com database, there were 33 agents with at least two double-ended sales. These transactions represent 81 of the 5994 sales (1.4%) in our database. We then used the Realtor.com website, or those for Zillow and HomeLight, to learn what percentage of 20 recent, consecutive, listed sales for each agent were double-ended.

- We could not find information on recent sales for four of these 33 agents.
- Five of the remaining 29 agents double-ended only two (10%) or three (15%) of their 20 sales. These percentages were similar to those percentages in cities with high double-end rates.
- Thirteen of the remaining 24 agents double-ended between four (20%) and six (30%) of their 20 sales.
- Of the remaining 11 agents, seven double-ended at least half of their sales. One double-dipped 18 of the 20 sales. This agent, and another who double-ended 14 of the 20 transactions, sold mainly properties priced under \$100,000.

Days on the Market: The above analysis suggests that concern about litigation, low sale prices, agency and agent priorities, and possibly agent dispersion affect double-end sale rates. Yet, it does not provide a convincing explanation as to why these rates vary so greatly from city to city, with rates in five cities – Boston, Providence, Birmingham, Cleveland, Minneapolis – being three to four times larger than the rates in three other cities – Charlotte, Oakland, and Portland. One factor that could help explain these differences is the expectation of a speedy sale because of a low time of sale rate in an area. In particular, seller expectations of a rapid sale could influence listing agents to quickly find a buyer and buyers to speed decisions about purchase.

A useful indicator of this expectation is the time it takes to sell a property. A specific measure of this time period is the median days a home is on the market, as reported by Movoto for mid-March.³⁶ Table 6 includes this number and the double-end sale rate for each city in our sample. As is evident, there is a strong correlation (significant at the 0.05 level) between time to

³⁵ Brobeck, "Hidden Real Estate Commissions," loc. cit., p. 7. These agents, though, would usually qualify to receive a referral fee.

³⁶ Movoto Real Estate, Local Market Trends.

sell and double-ending. In our sample of 5996 transactions, the longer properties remained on the market, the more likely they were to be double-ended. The three cities with the lowest double-end rates represent three of the four cities with median days on the market of fewer than 30. At the other end, the only three cities with median days over 50 have very high double-end rates. While the correlation is not perfect, it does strongly suggest that time to sell is an important factor influencing double-ended rates.

Table 6: Median Days on the Market Compared to Double-End (DE) Rates

City	Days	DE %
Oakland	19	4.4%
Tucson	22	7.8
Portland	26	3.2
Charlotte	28	2.6
Providence	33	14.4
Chicago	43	6.2
Boston	43	12.4
Orlando	49	10.8
Birmingham	51	14.8
Oklahoma City	56	9.0
Minneapolis	57	14.5
Cleveland	58	12.8

Risks and Costs to Consumers

Since agents have been participating in the sale of about five million existing homes annually over the past several years, our estimate of a 10 percent rate of double-ended sales would mean that each year, about one million individual sellers and buyers face the risks and potential costs of double-dipping.³⁷ Our research suggests that low- and moderate-income consumers, who disproportionately purchase low-priced homes, are most likely to work with a double-dipping agent. Our research also suggests that buyers and sellers in areas with the least active home markets are also more likely to work with double-dippers. The risks consumers face involve overpayment of commissions and unfair treatment resulting from agent conflicts of interest.

³⁷ “U.S. existing home sales, 2005-2022,” Statista (March 15, 2021). Agents participate in the sale of about 90 percent of homes according to separate research commissioned by Real Trends and by Zillow.

Excessive Agent Compensation: To what extent are double-dipping agents overcompensated and who pays, the seller or buyer? As noted earlier, residential real estate agents collect an estimated \$100 billion a year in commissions, chiefly from home sellers. As documented earlier, agents also appear to perform about the same amount of work on a double-ended sale as they do when working with another agent. The report estimates that about ten percent of home sales are double-ended.³⁸ It also discovered that some double-ended sales are discounted by a percentage point and that very low-priced houses are most likely to be sold by a single agent, generating relatively low economic rents per transaction. All of this information suggests that double-dipping agents are over-compensated by several billion dollars a year. This estimate could well be a conservative one because many observers maintain that, even when agents receive a split commission, they are usually overcompensated.

Who pays this double-dipper overcharge, the seller or the buyer? Ostensibly the seller pays. They sign a contract with a listing agent that specifies not only that agent's commission but also the commission given to the buyer agent. At the closing of a double-ended sale, the seller pays the entire commission to the listing agent. Yet, in reality it appears that buyers pay more of the overcharge than do sellers. Most experts agree that most or all of buyer agent commissions are added to the list price of homes, which are eventually paid by buyers.³⁹ If listing agents were not required by local multiple listing services to list (and then pay) buyer agent commissions, there would be no need, or reason, to increase the sale price to provide this compensation. Accordingly, the some 500,000 buyers who work with double-dippers each year pay most or all of the double-dipper overcharge.

Agent Conflicts of Interest: The conflicts of interest of double-dippers could potentially harm home sellers and buyers materially through agent manipulation of the price of the house, the quality of the house, or the time to sell. Sellers usually desire a higher price and buyers a lower price. Buyers want to purchase the house on the market that is most desirable and affordable to them. Sellers will usually want to minimize the time it takes to sell their property. And both sellers and buyers want to be treated honestly and fairly by their agents.

The conflicts of interest of double-dippers can jeopardize each of these consumer goals. While two agents in a transaction also have the ability to influence the sale price in order to make a quicker sale, thus saving them time and allowing payment of their commissions, the agents also usually have fiduciary obligations that act to limit manipulation of their seller and buyer clients.

³⁸ The 9.4 percent average rate for the 12 cities was adjusted upwards a bit because the rate appears to be higher in rural areas and small cities.

³⁹ See: "Who Pays the Buyer's Agent Commission?" simplisharing on Surfield website (September 17, 2020). Audrey Ference, "Who Pays the Real Estate Agent When You Buy or Sell a Home," Realtor.com (August 22, 2017). Elizabeth Weintraub, "Who Pays the Commission to the Real Estate Agent," the balance (January 11, 2021). Tara Struyk, "Who Pays the Real Estate Commission?" Investopedia (December 31, 2020). Lydia DePillis, "The internet didn't shrink 6% real estate commissions but this lawsuit might," CNN Business (May 15, 2019).

A double-dipping agent working as a dual agent or transactional broker (facilitator) has no fiduciary obligations to either party. Particularly when either seller or buyer is more knowledgeable or determined than the other party, agents can take advantage of this inequality to pressure the weaker party to accept a more disadvantageous price and undesirable terms related, for instance, to repairs or scheduling. A double-dipping agent working with a buyer customer has even fewer obligations to that consumer.

These conflicts have been documented by a number of academic researchers for all dual agency transactions. As one study noted, this research “provides evidence that allowing dual agency creates incentives which distort outcomes in real estate markets...[It] adds to the existing evidence of agency costs in the residential real estate market, showing that misaligned and conflicting incentives lead agents to take actions which yield suboptimal outcomes.”⁴⁰

Price of Property: These conflicts of interest sometimes offset each other. That same study also found that “on net, allowing dual agency has virtually no effect on housing prices. This null effect is likely a combination of strategic pricing (which tends to raise prices) and favoritism toward the buyer, including seller leaning and disclosing sellers’ confidential information to buyers (which tends to lower prices).”⁴¹ Agents tend to encourage overpricing of the initial list price then manipulate sellers to lower this price to obtain a sale. But this null effect occurred only for the majority of deals studied. In a substantial minority of transactions, double-ended sale prices (and all other in-house sale prices) deviated from those that occurred when both sellers and buyers had their own agents. In these instances, either buyers overpaid or sellers received an unfairly low price.

Quality of Property: Agents wishing to double-dip also have an incentive to steer buyers toward homes that they have listed and away from homes that they have not listed. This steering can limit the pool of homes that are readily available to these buyers, potentially lowering the quality of the house they purchase compared to the house they would have purchased if their agent had not been promoting their own listings and discouraging buyer consideration of other listings. This topic has not been adequately researched. However, research has shown that some agents do steer clients to increase their commissions. One much-cited study found that buyer agents tend to steer clients away from low commission properties and toward properties with high commissions.⁴² There is also anecdotal evidence that agents

⁴⁰ Kadiyali, “Dual Agency,” loc. cit., p. 34. See also: Lingxiao Li, “Causation of Dual Agency,” loc. cit. Lu Han and Seung-Hyun Hong, “Understanding In-House Transactions in the Real Estate Brokerage Industry,” *Rand Journal of Economics* (November 11, 2016). J’Noel Gardiner et al, “The Impact of Dual Agency,” *Journal of Real Estate Financial Economics*, v. 35 (2007).

⁴¹ Kadiyali, “Dual Agency,” loc. cit., p. 34.

⁴² Barwick, “Conflicts of Interest,” loc. cit.

steer sellers and buyers to homes which they, or allies, have listed and away from those they have not listed.⁴³

Time to Sell Property: Several studies have found that dual agency reduces the time properties are on the market.⁴⁴ The involvement of only one agent or agency can make it easier to reach agreement on price and other terms of the sale. Only one study, however, has differentiated single-agent sales – as opposed to those within the same office or agency – in examining time on the market. Its data showing reduced time of sale were not conclusive, only “suggestive.”⁴⁵ One inherent limit of all this research is that time to sell is measured by the difference between listing and sale dates. Yet, there is a strong incentive for double-dipping agents to delay listing properties in order to increase the chances of finding unrepresented buyers. As noted earlier, some consumers have complained about these delays.

Impact of Agency: Local multiple listing services do not identify the specific relationship of agents to their sellers, only whether agents work with both buyer and seller in a transaction. As noted earlier, the agent could act as a fiduciary (with the other party as customer), as a dual agent, or as a transaction broker (facilitator). Consequently, it is challenging for researchers to explore differences in the impact of agent-consumer relationships on the welfare of sellers and buyers. However, some of these relationships have the potential to cause harm. Two situations are particularly fraught with risk for consumers.

The first is when a seller with a fiduciary agent agrees to permit the agent to shift their role to that of dual agent or transaction broker because that agent has found a buyer who wishes the assistance of the agent. In exchange for a timely sale, that seller gives up the ability of their agent not only to negotiate a higher price for the property and other beneficial terms of the sale, but also to provide any advice about these (and related) matters that could compromise the interests of the buyer. One would expect that sellers, who lose fiduciary representation when their agent agrees to work with both seller and buyer as a dual agent, would often receive a lower

⁴³ One journalist wrote about a seller who complained that his realtor “appeared to do everything in her power not to sell the condo,” refusing to hold open houses, correct spelling mistakes in listings, or replace poor photos. These tactics “represent one of the simplest ways to double-dip in the commission pool.” King, “Tricks,” loc. cit. In a brief scan, the following complaints were found on the Pissed Consumer website:

- “The agent ‘reserved’ the house for his contacts, and refuses to show to other agents.”
- “He gave my agent the run around for weeks including ignoring her calls and sending false signals about the property. [When I called him as a potential client] all of a sudden the property was available.”
- “From demanding that we send her money personally to pushing us into a bad property for her own interest...”

⁴⁴ See especially: Gardiner, “Impact of Dual Agency,” loc. cit. Geoffrey Turnbull and Jonathan Dombrow, “Individual Agents, Firms, and the Real Estate Brokerage Process,” *Journal of Real Estate Finance and Economics*, v. 35, n. 1 (2007).

⁴⁵ Kadiyali, “Dual Agency,” p. 5.

sale price for their homes as a result of the shift in agent roles. Regardless, they lose representation and advice from a loyal agent.

The second situation is when a buyer, as a customer, agrees to deal with an agent who is a fiduciary to the seller. That buyer is likely to suffer harm because the agent is legally obligated to be completely loyal to the seller. Accordingly, buyer customers are more likely to pay a higher sale price and agree to other disadvantageous terms than if they had representation. This risk is magnified by evidence that these buyers do not fully understand the obligation of the agent to ignore their interests in supporting those of seller clients. The 1983 Federal Trade Commission study of the industry reported that in a survey they commissioned, three-quarters (74%) of buyers mistakenly thought that the listing agency worked for the buyer and not the seller.⁴⁶ A much more recent survey found that two-thirds of respondents mistakenly believe that real estate agents are “always” or “almost always” required to represent the interest of the home buyer or seller with whom they are working.⁴⁷

Many listing agents make little effort to ensure that buyer customers understand that the agent is obligated to be loyal to the seller. Most written disclosures do not state this lack of loyalty clearly and more importantly, are not read carefully by the buyer. As one real estate professional characterized agent disclosures: “Few agents make it clear to the Seller or Buyer what their obligations are related to this [agency disclosure] document. They simply tell the Buyer and the Seller that the disclosure is a required document they must sign before proceeding. The client or consumer signs this form without the slightest idea of what they are signing or what ‘Agency’ means.”⁴⁸ Consequently, many buyer customers are not aware that listing agents have no obligation to maintain confidentiality and impartially facilitate sale of a property.⁴⁹ It is not clear, though, how frequently a buyer, as a customer, agrees to deal with a fiduciary to the seller.

Non-Material Costs: In assessing the potential harm of double-dipping, one must also consider non-material costs. Does this double-dipping increase unethical conduct by agents and, as a result, unfair treatment of their clients and customers? The structural conflicts of interest would tend to increase the probability of dishonest, manipulative conduct including steering, disclosure of confidential information, and leaning on clients. This report has cited many

⁴⁶ Federal Trade Commission, *The Residential Real Estate Brokerage Industry: A Staff Report* (1983).

⁴⁷ Stephen Brobeck, “The Agency Mess: Home Buyer and Seller Confusion and Costs Related to Diverse and Poorly Enforced State Laws about the Role and Responsibility of Real Estate Agents,” *Consumer Federation of America* (January 14, 2019), p. 2.

⁴⁸ Drew Seargent, “Arizona Real Estate Agency Disclosure: Why Is It Important to Buyers and Sellers?” *arizonahomesbydrew.com* (2019).

⁴⁹ The inadequacy of agency disclosures is discussed in: Stephen Brobeck, “Why Required Real Estate Agent Disclosures about Representation Fail and How They Can Be Improved,” *Consumer Federation of America* (January, 2020). Olazabal has noted that “ministerial acts” provided by listing agents to unrepresented buyers reassure these buyers that agents can be trusted to assist these buyers and not be obligated to advance the interests only of their seller clients (“Redefining Realtor Relationships and Responsibilities,” *loc. cit.*, pp. 127-128).

sources affirming that double-dipping encourages unethical agent behavior. CBC Marketplace documented some of these practices with a hidden camera when they sought to purchase property from Toronto-area real estate agents. Six of 10 agents promised to share confidential information about the seller, one revealed the amount of a competing buyer's bid, and still another said she could rush an offer through before other offers were received.⁵⁰

A marketplace rife with unethical conduct is certainly not a desirable one societally, even when some conflicts offset others materially. That would help explain why a significant minority of real estate agents have said that they refuse or are reluctant to double-dip. As one agent noted: "I just cannot personally justify being a dual agent. It just feels ethically wrong to me." More broadly, might not toleration of unethical double-dipping conduct increase the willingness of residential real estate practitioners, at least some of them, to engage in other types of unethical behavior?

Policy Recommendations

Given the harm to consumers, should all double-ended sales be prohibited? In our view, that would be unwarranted. Such a prohibition would, for example, prevent useful facilitating (transactional brokering) of sales. Although a case can be made that home sellers and buyers should be required to have fiduciary representation, such a requirement seems politically unrealistic and, in some cases, would be difficult to justify. Should an agent, for instance, be prohibited from working with a buyer and seller who both requested the services of that agent as a facilitator? However, there is no need for two agent facilitators in a sale, and the single facilitator should receive a far lower commission, in part because they have no fiduciary obligations.⁵¹

We do, however, strongly support an expansion of the prohibition on dual agency to all states. An agent cannot adequately represent both a seller and buyer because the two parties have conflicting interests. This awareness has convinced eight states to ban dual agency. Depending on the specific state, an agent with the potential of working with both buyer and seller can still either serve as a facilitator, with agreement from both parties, or refer the second party to a "designated agent" in their firm.⁵² Designated agency raises serious questions of confidentiality and collusion, especially when the designated agent works in the same team or office, even though that agent usually has a fiduciary relationship with their client.⁵³

⁵⁰ Sarnan Malik, Tiffany Foxcroft, "Real estate agents caught breaking the rules on Marketplace's hidden camera," CBC Marketplace (November 3, 2016).

⁵¹ UK estate agents usually receive one to two percent commissions to facilitate the sale of a home. Debra Kamin, "Are Broker Commissions Too High?" New York Times (February 18, 2021).

⁵² Olazabal, "Redefining Realtor Relationships," loc. cit.

⁵³ See: Douglas R. Miller, "Designated Agency – Is It Fraud?" CAARE website. Brian Madigan, "No Double-Dipping in Real Estate," active rain (November 29, 2015).

A consumer almost always loses, however, when a fiduciary agent, in the middle of the sale process, asks their client to accept a change in status to dual agent or transactional broker. This shift greatly limits the services of the agent to their client -- not only in negotiating price and other terms of the sale, but also in giving advice that could disadvantage the other party, such as: Do you think this is a good sale price for me? Or, should I be worried that the buyer has not yet qualified for a mortgage loan? In most instances, this change is precipitated by the agent finding a buyer and is “agreed to” by the seller. These sellers, though, often do not fully understand the implications of the legal agreement they are required to sign and are pressed by their agents to accept the loss of fiduciary representation, in part through the enticement of a quick sale. Accordingly, we support a prohibition of any changes in the specific role of the agent, particularly a fiduciary one, during the sale process.

Customers (usually buyers) who agree to work with a fiduciary agent of the other party place themselves in an especially disadvantageous position. Surveys cited earlier show that many of these customers expect their agent to work on their behalf or at least show neutrality, yet these agents are legally required to advance the interests of their seller clients, including passing on information they learn about a buyer’s financial status and reservation price. We are inclined to favor prohibiting a customer from working with a fiduciary of the other party without representation by an agent or attorney. Our less than vigorous support of this measure reflects the fact that some customers are prepared to accept the disadvantages in exchange for a quick sale (especially in a seller’s market) or a discounted commission that would allow a buyer to receive a lower sale price. Regardless, it is imperative that these buyer customers receive an effective early oral and written disclosure of the agent’s total loyalty to their seller client. It is also helpful if, as a dozen states require, agents are required to provide “reasonable care” to their customers.”⁵⁴

Using public policy to reduce the excessive compensation of double-dipping agents is also challenging. If consumers fully understood this collection of economic rents at their expense, they would insist that their listing agents substantially reduce their commissions. However, most sellers understandably are more focused on the sale of their property – its timing and price.⁵⁵ Any effective early disclosure to the seller of the commission split they will pay to the buyer’s agent would focus seller attention on and help inform them about this issue. The National Association of Realtors has recently agreed to accept such a disclosure in response to an

⁵⁴ Olazabal views this requirement as an important consumer protection (“Redefining Realtor Relationships, loc. cit., pp. 108-110).

⁵⁵ For a discussion of home seller and buyer focus during a sale, see: Stephen Brobeck, Consumer Federation of America Comments Submitted at DOJ-FTC Public Workshop on Competition Issues (June 2018).

antitrust lawsuit filed by the U.S. Department of Justice. The specific details of this disclosure have not been announced.⁵⁶

A more effective way to reduce the overcompensation of double-dippers would be for plaintiffs to prevail in major antitrust lawsuits challenging the coupling (also called tying) of buyer agent commissions to those of listing agents.⁵⁷ Through multiple listing service rules, the industry currently requires that sellers and listing agents effectively set the commission rates paid to buyer agents. If buyers and sellers were each required to compensate their agents, they would be less willing to pay commissions of 5-6 percent commissions to double-dippers. Initially, sellers would probably be willing to pay 2.5-3 percent commissions to their listing agents, but buyers would be less likely to pay an additional 2.5-3 percent commission to the same agents, especially if they were treated as customers. Over time, because of greater transparency of agent compensation, sellers and buyers would become less willing for agents to receive 5-6 percent when their agent worked with them as a dual agent or transaction broker.

Advice to Consumers

Our most important advice to home sellers and buyers is to avoid double-ended sales, considering those only when one agent functions as an impartial facilitator (a transaction broker) and charges a significantly lower commission. Most agents are unwilling to accept these conditions.

In searching for an agent, sellers and buyers should research whether an agent is a frequent double-dipper. This double-dipping is an indication that the agent values finding unrepresented buyers (or less commonly, sellers) more highly than serving the interests of their clients. To learn about the double-dipping frequency of an agent, review at least several dozen of the agent's most recent sales. For active agents, these sales are listed by Realtor.com, Zillow, and/or HomeLight.⁵⁸

Sellers who are asked by listing agents for a change in role during the sale process – typically from fiduciary to dual agent – should refuse the request unless the seller secures the services of an attorney and the agent agrees to a reduced commission.

Customers, who wish to work directly with agents who are fiduciaries to the other party (usually sellers), should recognize the great risks involved and always seek the assistance of an attorney who can protect their interests in the sale.

⁵⁶ Consumer Federation of America has commented on this proposed settlement, noting its benefits and limitations. Consumer Federation of America press release (November 20, 2020).

⁵⁷ *Sitzer v. NAR* (2019); *Moehrl v. NAR* (2020); *Bauman v. MLS Property Information Network, Inc.* (2020).

⁵⁸ At present, Realtor.com includes information about recent properties sold for the largest number of agents. But not infrequently, either Zillow or HomeLight includes a more complete, recent list of these sales for some agents.

Summary of Findings

Incidence: This report examined double-dipping by real estate agents who work with both seller and buyer in a double-ended home sale. Research on more than 6,000 recent sales throughout the country revealed that:

- An estimated 10 percent of all home sales with agents, involving one million consumers annually, are double-ended.
- Double-ended sale rates ranged greatly in 12 major cities – from 2.6 percent to 14.8 percent – in part because of different expectations about the speed of sales.
- These rates tended to be higher in small cities than in large ones.
- The rates tended to be much higher for homes with low sale prices but not for homes with high prices.
- For most national real estate firms, these rates varied little from the estimated national average, suggesting that the firms neither encourage nor discourage double-dipping.
- A small percentage of agents double-dip in a high percentage of their sales.

Risks and Costs to Consumers: The report also revealed that many realtors, as well as experts and journalists writing about double-dipping, have criticized the practice. This criticism has emphasized excessive compensation and conflicts of interest that harm sellers and/or buyers.

The report estimates that double-dippers are overcompensated by several billion dollars annually – that is, are paid “economic rents” in excess of the value of services they provide. These commissions are largely added to home prices, so are paid mainly by home buyers.

The report also identified conflicts of interest that can be especially harmful to consumers:

- Some buyers overpay (above-market prices) while some sellers are undercompensated (below-market prices) although for most sales, it appears that one agent manipulation (strategic pricing) tends to offset another (buyer favoritism).
- Agent steering limits the effective housing choices of some buyers.
- Double-dipping agents tend to spend more time finding a buyer than less time closing a sale than if they were dealing with a buyer agent.
- Sellers, who are persuaded by a double-dipper to allow a shift in the agent’s role from fiduciary to dual agent or facilitator (transaction broker), lose that agent’s ability to negotiate a higher price or give any advice that affects the interest of the buyer.
- Buyers who agree to work with an agent as a customer, not a client, are at a great disadvantage in dealing with the seller’s agent.

- In general, double-dipping encourages dishonest and manipulative agent behavior, staining the industry's reputation and providing cause for consumer complaint.

Policy Recommendations: The report recommended the following policy reforms:

- Prohibition of dual agency in all 50 states and DC.
- Prohibition of a shift in agent status – from fiduciary to dual agent or transaction broker – during the course of the sale.
- Requiring and ensuring that buyers willing to work with listing agents as their customers receive an early oral and written disclosure of the agent's total loyalty to the seller.
- Uncoupling commissions so that sellers and buyers would each negotiate and pay a commission to their agent.

Advice to Consumers: The report also offered the following advice to consumers:

- Avoid agents who frequently double-dip. Consult sources such as Realtor.com and Zillow to learn if an agent has frequently double-dipped in recent sales.
- Avoid participating in double-ended sales unless a single agent functions as an impartial facilitator and receives a much lower commission.
- Sellers should refuse their agent's request to shift the agent's role from fiduciary to dual agent or transaction broker in the middle of the sales process, unless the sellers secure the services of an attorney to represent them and obtain a significantly lower commission. In this shift, sellers lose the ability of their agent both to negotiate a higher price and to provide any advice that would affect the interests of the buyer.
- Buyers should avoid working as customers (not clients) with listing agents who are fiduciaries to sellers unless they (the buyers) secure the services of an attorney to represent them. Without representation, these buyers are at a great disadvantage working with a listing agent who is required to be totally loyal to their seller client.