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Fred Meyer, former president of the Massachusetts Association of Realtors, broke with the trade group and formed an organization to oppose the dual agency law.

'Dual agency' law for brokers stirs controversy

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As a general rule, law firms avoid representing both sides in a divorce, and for good reason — the arrangement is an ethical quagmire, rife with conflicts of interest. In real estate, however, it's a common practice: The same agency will often represent the buyer and seller in one transaction.

"Dual agency" has been practiced for a long time, but in the last couple of years it has become the subject of a legislative tussle, pitting large real estate firms and the powerful **Massachusetts Association of Realtors** against a coalition of consumer advocates and small agencies that limit themselves to representing only buyers or only sellers on a given transaction. The issue: How far should agents go to explain the implications of dual agency to clients?

The Legislature, at MAR's urging, put dual agency on a sounder legal footing last year by allowing a firm to appoint "designated agents" whose fiduciary loyalty was to either the buyer or the seller in a given transaction. The large firms, which often find themselves handling both ends of a transaction, wanted to assure customers that individual agents could still act as advocates for their clients.

But the change, which the Legislature passed quietly in June 2004 without debate as an amendment to the 2005 budget, outraged some agents, including the former president and former vice president of MAR. They saw it as a move that allowed large firms to blur the conflicts of interest they believe to be inherent in dual agency.

What are those conflicts? In a real estate office, conversations can be overheard, faxes can be read by many people, computer screens can be viewed over someone's shoulder. Supervisors who oversee agents on both sides of a deal might learn of details — for example, that a seller is eager to sell, or

that a buyer loves a property so much they're willing to pay above asking price — that can be used to one party's benefit.

"When they think they're hiring the large company, they're not getting the whole company," said **Fred Meyer**, the former MAR president. "They're only getting one agent in the large company."

The law, which went into effect in July, required that customers give their informed consent to a designated agency by signing a disclosure form. But it also said signing of that form amounted to a "conclusive presumption" that the customer had consented to the arrangement.

The law — and the new form — provide a "bright line," protecting agents from frivolous lawsuits without eliminating agents' liability of agents, said **Stephen Ryan**, MAR's general counsel and government affairs director.

"We knew that these relationships would be able to be practiced in Massachusetts," Ryan said. "What we weren't able to provide to consumers or our licensees was a precise method to do it properly."

Meyer, now chairman of **Real Estate Agents for Real Agency**, a group of brokers who shun dual agency, have pushed back with a bill intended to ensure agents fully explain the implications of using a firm that represents both ends of a deal.

The bill's sponsor, Sen. **Robert O'Leary**, D-Barnstable, said he sympathized with the complaints of smaller firms in his Cape and Islands district who felt the 2004 legislation creating designated agency put them at a disadvantage.

"My sense was that it favored the larger agencies a bit more," O'Leary said. "They're more likely to grab both ends of the business."

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