

**From:** Newman, David W. (USTP)  
**Sent:** Monday, April 10, 2017 4:16 PM  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** § 327 And Real Estate Agents

Dear Trustees,

A question has arisen as to whether a bankruptcy estate may employ a real estate agent where the listing agreement provides for dual representation / agency? 11 U.S.C. § 327(a) states "Except as otherwise provided in this section, the trustee, with the court's approval, may employ one or more attorneys, accountants, appraisers, auctioneers, or *other professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons*, to represent or assist the trustee in carrying out the trustee's duties under this title." (*Emphasis added*) My understanding is that both Judge Pappas and Judge Myers find that dual agency listing agreements cannot be approved because the real estate agent may also represent the buyer who has an interest adverse to the estate and/or that the agent will not be disinterested if the agent owes duties to a buyer and the bankruptcy estate. I'm not aware of the court changing this position. If you seek employment of a real estate agent on a dual representation / agency basis, please be sure that you are clearly and conspicuously disclosing that in the employment application and the supporting declaration / affidavit rather than relying on the listing agreement to constitute disclosure. If you are aware of cases where the court has specifically ruled (rather than negative notice applications), that dual representation / agency is not an impediment to employment under 327, I'd appreciate it if you would share the case(s) with me. Thank you for your dedicated service as a trustee.

Respectfully,

David W. Newman  
Assistant United States Trustee  
U.S. Department of Justice  
Office of the United States Trustee  
720 Park Blvd., Ste. 220  
Boise, ID 83712  
(208) 334-1300 x 2222

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