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Thursday, April 27, 2000

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re JON and MARY BETH KLIMA,

No. 00-10079

[Debtor](#) (s).

Memorandum

Like many states, California has enacted laws permitting a real estate broker to represent both the buyer and the seller in a real estate transaction. Calif. Civil Code § 2079.17; 3 Cal. Real Estate L. & P., Brokers, § 61.22[2]. However, the concept of such dual agency has consistently drawn severe criticism. See, e.g., "Sub-Agency in Real Estate Brokerage: A Proposal to End the Struggle With Reality," 61 S.Cal.L.Rev. 399, 452 (1988); "The 'Brokerage Relations' Addition to the Illinois Real Estate License Act: The Case of the Legalized Conflict of Interest," 22 S.Ill.U.L.J. 725 (1998). As the latter comment noted, the practice of dual agency in real estate transactions is highly controversial. Representing more than one party to a transaction presents a conflict of interest since both clients may rely upon the licensee's advice and the clients' respective interests may be adverse to each other. In bankruptcy cases, real estate brokers are professionals whose employment must be approved by the bankruptcy court. *In re Haley*, 950 F.2d 588 (9th Cir. 1991). The court may only approve the employment of a professional who represents no interest adverse to the estate. 11 U.S.C § 327(a). Whatever the status of California law may be on dual agency, no broker can be appointed to represent a [bankruptcy estate](#) unless his or her loyalty and fiduciary duties are undivided. Accordingly, the [trustee](#)'s application to employ a real estate broker in the above matter will be approved only with the understanding that the broker shall not represent any other interest in connection with this case.

Dated: April 27, 2000

Alan Jaroslovsky

U.S. [Bankruptcy Judge](#) 

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