

# Forestry, Real Estate and Potential Conflicts of Interest

## FORESTRY, REAL ESTATE AND POTENTIAL CONFLICTS OF INTEREST

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**A** conflict resulting from offering forestry services and real estate services can seem to be a non-issue. We treat our clients fairly and with integrity and there is no problem. Until there is.

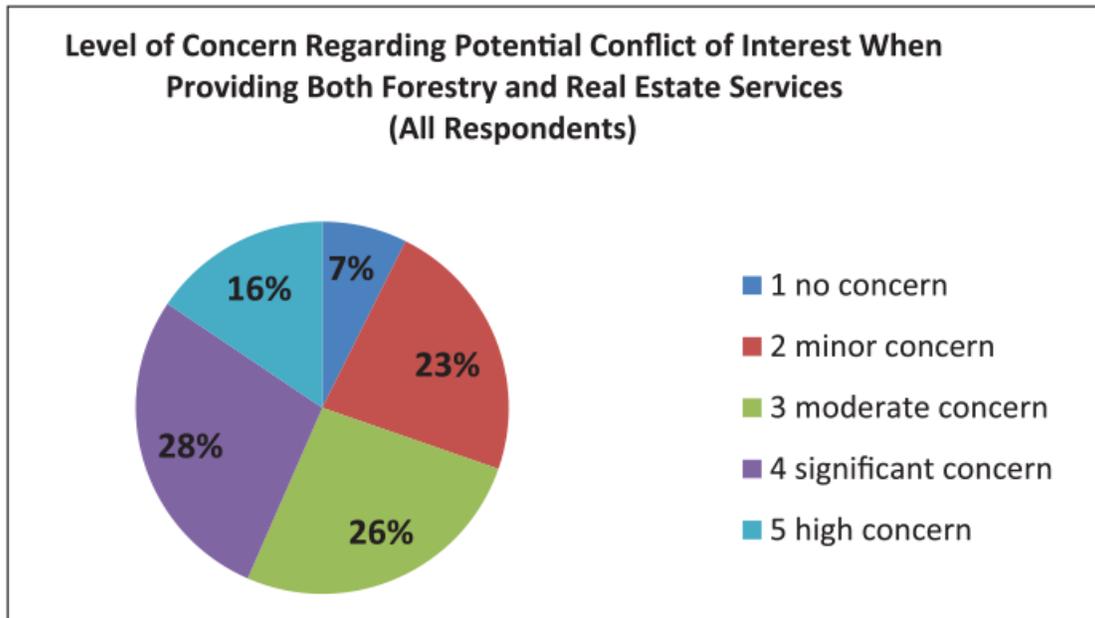
For many years I provided forestry services as Sperry Ridge Natural Resource Management and real estate services as NW Forest Properties. On occasion these services would overlap. The potential for a breach of ethics, or the perception thereof, is a sensitive area.

My intent in writing this article is to bring to the forefront an examination of the interaction between forestry services and real estate services. References to forestry services are those services offered in the context of a land transaction; real estate services primarily, but not exclusively, refer to brokerage services.

***...THE ACF CODE OF ETHICS IS STRONGLY EMBRACED BY ITS MEMBERS...MEMBERS WILLINGLY EMBRACE THESE STANDARDS AND FOR MOST, IF NOT ALL, IT IS TOTALLY CONSISTENT WITH THEIR CHARACTER.***

I decided to call upon the collective wisdom and experience of Association of Consulting Foresters (ACF) members. Many members provide both real estate and forestry services or work for an organization that does. Why rely solely on my experience in writing this article when this very issue has been thought through many times over? Policies have been adopted and practices prescribed by many of our member companies.

The national office sent out a survey, on my behalf, to the entire ACF membership. The results were very informative. Not surprisingly, this issue is already on the radar screen of many of our members. Seventy percent of respondents consider the potential for conflict of interest to be of moderate to high concern, and 44 percent indicated that it is of significant or high concern.



The ACF code of ethics is a central point of emphasis for our organization. It is a good guide that can keep us out of trouble. More importantly, it spells out our collective values for conducting our lives and activities professionally and with integrity.

While all the canons of the ACF code of ethics are relevant, 7, 9 and 10 are particularly important to this discussion.

7. ACF Consulting Foresters will be loyal to their clients and to the organization in which they are employed and will faithfully perform their work and assignments.

9. ACF Consulting Foresters will not voluntarily disclose information, received in confidence, concerning business affairs of their employers, principals, or clients, unless express permission from all parties is first obtained or the disclosure is required by law.

10. An ACF Consulting Forester must avoid conflicts of interest or even an appearance of such conflicts.

It has been very satisfying to me to see that the ACF code of ethics is strongly embraced by its members. Potential breaches of the code are addressed as they occur. It is far more than window dressing. ACF members are held to a high standard. Members willingly embrace these standards and for most, if not all, it is totally consistent with their character.

Most of the survey questions fell into two general categories.

- 1) Questions about ACF members and member companies that offer both types of services. The results of these questions are of interest but have limited value due to reasons discussed here.
- 2) Questions about specific areas at risk of conflict of interest and the policies and practices of members and member companies to prevent the occurrence of and/or the perception of conflict of interest.

The challenge of coming to a quantitative conclusion based on responses to some of the questions is illustrated by the survey question: "Do you, or does your firm offer real estate services?" It is likely that more than one person from an individual company responded. This would skew the results toward more "Yes" responses.

We received 43 "Yes" answers to this question – 35 percent of all responses. Given the probable bias toward larger companies – companies with two or more respondents – we can be relatively safe in assuming that less than 35 percent of the companies represented by respondents offer both forestry and real estate services.

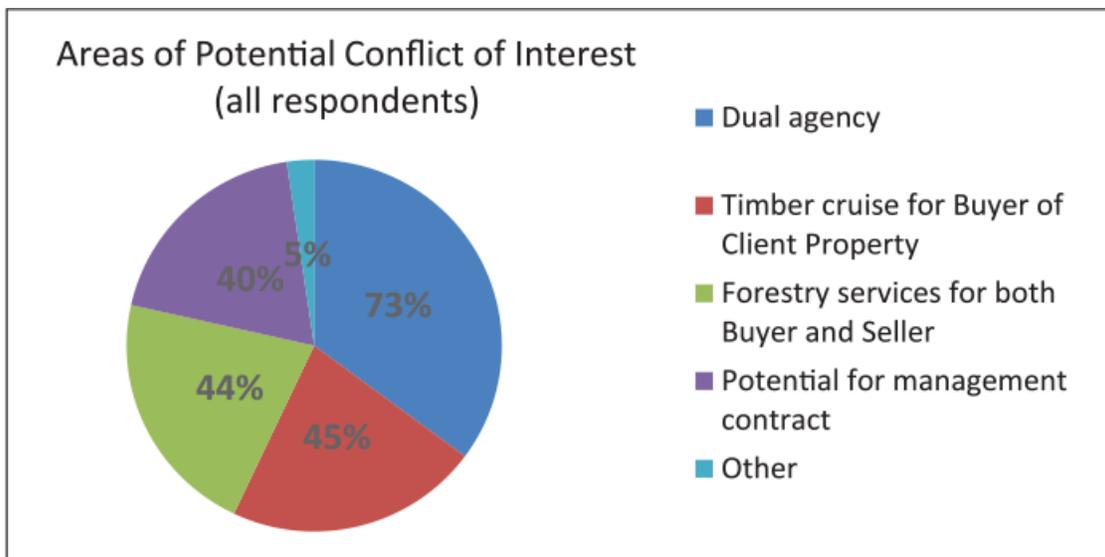
Likewise, it would be dangerous to extrapolate the results to the general membership. It would not be surprising if foresters active in real estate were more likely to participate in the survey than those who are not involved in real estate.

While the results on some of the questions were quantifiable, the greatest value of the survey is qualitative in nature. Particularly informative were the responses to questions addressing the respondent's level of concern regarding conflict of interest when both forestry and real estate services are offered, and the specific areas where they see the potential for conflict of interest.

I asked survey recipients to identify areas where they see the potential for conflict of interest. I set forth four scenarios where there could be a potential conflict (see chart on this page).

Respondents were asked to choose all that apply and to offer other areas of concern. The choices were as follows:

- 1) Dual agency representation (representing both buyer and seller)
- 2) Providing the timber cruise upon which a valuation will be based
- 3) Providing forestry services for a potential buyer of a client property (your client or a client of another forester in your organization)
- 4) The potential to obtain a management contract if your client is the successful purchaser
- 5) Other



While conflict of interest can potentially occur in any situation, it is impossible to know if a scenario was selected in a general sense or if it was selected because it applied to the individual specifically. Nevertheless, the results are indicative of the awareness and level of concern for each of the scenarios.

Far and away, dual agency was indicated as the scenario with the greatest potential for a conflict of interest. Seventy-three percent of the respondents cited dual agency as a potential for conflict of interest. Dual agency is strictly a real estate matter and therefore is not technically a conflict between offering forestry services and real estate services. At some point, however, many forester-brokers will be faced with the decision of whether or not to function in a dual agency role.

The greatest value of the survey came in the responses to these two questions:

- 1) What policies do you have in place to avoid potential or perceived conflicts of interest?
- 2) With specific regard to dual agency, what policies do you have in place to avoid potential or perceived conflicts of interest?

Unlike the other questions, which were multiple choice, these required a written response. There was considerable overlap in the answers. For the sake of discussion, we will address the response to these two questions together. All of the responses fell into five general categories: avoidance; disclosure/transparency; separation of duties; compliance; and no policy.

**Avoidance.** The easiest way to avoid a conflict of interest is to steer clear of situations that present the potential for even the perception of conflict of interest. This is the most common policy stated by respondents. Seventeen of the 43 respondents to these questions have a policy of not representing more than one party to a transaction – either for forestry services or real estate representation. Avoidance is a policy that ensures to the greatest extent that there will be no conflict of interest.

**Disclosure/Transparency.** Fourteen of the 43 respondents have policies allowing dual agency and/or providing forestry services to both a buyer and a seller. The importance of transparency and full disclosure was stressed by all these respondents. Providing services for two or more parties to a transaction is clearly the approach with the greatest risk for a conflict of interest – actual or perceived. Clear communication and transparency are always important. In a dual agency situation, they are essential.

In Oregon, dual agency is company-based. This means that when the seller and buyer are represented by different brokers in the same company, it is still considered dual agency. Oregon's term for dual agency is "disclosed limited agency." A single broker can act in a dual agency role. It will, however, limit the advisory role of the broker. Confidentiality and loyalty must go both ways. Under no circumstance should a broker or company act in a dual agency capacity without the express permission of both parties to the transaction.

**Separation of Duties.** Overlapping with both the avoidance and the disclosure strategy is the practice of allocating responsibilities to two or more persons in the same company. Whether it's providing forestry services or brokerage services, the individuals have a clear responsibility to one client only.

**Compliance.** Several respondents pointed to compliance with the ACF code of ethics, client contracts and real estate agency rules as protection against a conflict of interest. In states that allow dual agency, agency disclosure is required.

**No Policy.** This is not as negligent as it might sound. Several foresters who responded this way noted that operating with integrity in all situations is just the right way to run your business. "You do the right thing."

I encourage the adoption of a policy, or at the very least, a thoughtful discussion regarding the intersection of transaction-related forestry services and real estate services. As evidenced by the responses received, there is not one single, best approach to avoiding conflicts of interest. It depends on your client, your tolerance of risk and the specific transaction. Some approaches, like avoidance, are safer and more risk averse. Others, ones allowing for dual agency for example, present more risk. Risks can be limited by assessing each situation on its own.

As ACF members we enthusiastically embrace the high standards of conduct espoused by ACF. Whatever policy you adopt, it all boils down to integrity and acting in the best interest of your client and your company.

Doesn't it always?

*Fred Sperry, a graduate of the College of Forestry at Oregon State University, has been a consulting forester since 2006 and a licensed Oregon real estate broker since 2009. He is the owner and principal broker of NW Forest Properties. Previously, he was employed as a forester by Stimson Lumber Co. and by Giustina Resources.*