

Eradication of damage caused by double brokering in real estate transactions  
-From the viewpoint of the director's responsibility in the company law-

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[SYNOPSIS]

Double brokering is now made natural in real estate transactions. In this regard, can a director of a trader doing such a transaction not be legally liable? In this research, I clarify the range of responsibility based on the recent tendency of the director's responsibility, and apply it to double brokering.

Directors of the company are liable to third parties for damages under Article 429 of the Companies Act. This responsibility has in the past been used by creditors to recover claims in the event of bankruptcy by claiming damages under this discipline. However, recently, the use of Article 429 of the Companies Act has led to an unprecedented pursuit of director responsibilities. In other words, when the company has employer liability due to an employee's tort and the company has enough resources, the director tends to sue as a defendant, and in particular it has come to be seen in cases where the company is of a reasonable size and directors can virtually no longer monitor and supervise field employees.

Such pursuit of liability tends to be interpreted as negative in theories, but if the company has not gone bankrupt, it is acceptable to allow director's responsibility because the company will carry out damages. However, it does not mean that the negative effects of job atrophy or lack of human resources will arise. In addition, there is a change in the legal change that the duty to establish an internal control system in pursuit of a legal compliance system has been written.

With regard to the construction of such an internal control system, the use of the standard of the surface of the dispute is not effective in the case where it is difficult to make the dispute surface and it is difficult to be perceived as the internal danger such as double brokering. Therefore, it should be considered on the basis of whether or not the risks attached to the business have come to life. When applied to double brokering, the buyer who can not claim the damages from the seller with a special contract that is disadvantageous without being given the opportunity of consideration can claim the directors for damages as a violation of the internal control system construction duty.

If the above interpretation leads the director to be liable in court, I think that the double brokering itself will go to eradication.