

Maryland Real Estate Commission Message - Open House Conduct

Dear Broker, Associate Broker, and Salesperson:

During the course of recent classes on the law of Agency, and in training sessions for instructors of the approved Agency Law CE class, there has been much discussion on the proper role of the agent while sitting an open house. First and foremost, there seems to be a misconception that there is some distinction under the law of agency between the listing agent and any other agent affiliated with the listing broker regarding the open house. It is absolutely clear that **any** agent affiliated with the listing broker who holds an open house is there exclusively as the seller's agent. This duty of loyalty to the seller is not in any way diminished just because the agent is not the listing agent. This is important because many agents have openly admitted that their primary goal in sitting an open house on behalf of the listing agent is to recruit prospective buyer clients. Such activity can be a violation of the agent's duty of loyalty to the seller. What is important is how the agent conducts himself/herself at the open house.

For example, suppose an agent (not the listing agent) is holding an open house from noon to 4 p.m. and some prospects come and look around. It would be highly inappropriate for the agent to make disparaging comments about the house in order to entice the buyer to look at other properties the agent might want to show them. However, even if the buyer makes it known to the agent that they are not interested in that particular house, it is still improper to solicit that buyer as a client or customer at that time and place. Remember, at the seller's house during the time the house is open, the agent is the exclusive representative of the seller. Therefore, any substantive discussions with a buyer prospect concerning other properties or buyer representation must occur at a different time and place. It is a simple matter to explain that to the buyer and arrange to meet them later somewhere off-site. Similarly, it's acceptable to take the sign-in sheet back to the office and contact prospects. Again, the key is that it occurs later, and not on the seller's property. The other standard to remember is that the agent may not steer any prospect away from the particular property the agent is representing or to engage in actual buyer representation at and during the open house.

We have heard of sellers attending open houses supposedly for their benefit only to witness agents making negative comments about the house and urging buyers to consider other properties, which the agent then proceeds to show the buyer on their computer. While this is extreme, there are other more subtle but no less inappropriate activities in which agents engage. Please keep in mind the simple rule of agency that you may only represent the interests of the seller while holding an open house.

There have been reports of agents sitting at the open house making negative comments about the house and urging buyers to consider other properties, which the agent then proceeds to show the buyer on their computer while at the open house. While this is extreme, there are other more subtle but no less inappropriate activities in which agents engage. Please keep in mind the simple rule of agency that you may only represent the interests of the seller while holding an open house. Also, remember that under Maryland law, while providing real estate brokerage services, you must always be representing a client. This means that a seller cannot legally consent to a written waiver of agency by the agent conducting the open house, which appears to be a growing practice by agents who are conducting open houses. Such "waiver of agency" is prohibited under Maryland law.

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