

**AGENCY DISCLOSURE AT THE OPEN HOUSE
OR WHEN SHOWING PROPERTY -
WHO ... ME?**

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The Maryland Real Estate Commission has recently formally adopted an interpretation of the current agency disclosure under Maryland law applicable to residential real estate transactions.

Since January 1, 1999, the Maryland Real Estate Brokers Act has specified that a real estate licensee is required to disclose in writing whom the real estate licensee represents in each real estate transaction. The agency disclosure, under current Maryland law, is required to be given not later than the first scheduled face-to-face contact with the seller or lessor or buyer or lessee.

In order to comply with the law, the written agency disclosure must be on the official agency disclosure form as adopted by the Maryland Real Estate Commission, which is captioned as "Understanding Whom Real Estate Agents Represent." The current version of the agency disclosure form is dated January 1, 1999.

There has been some confusion and contradictory opinions as to whether a real estate licensee in a residential real estate transaction is required to give the agency disclosure form at the time of an open house or to a seller's agent who might be present at the time of showing a property by the buyer's agent to a buyer.

The recent interpretation of the Maryland Real Estate Commission answers these questions quite definitively.

The following is a synopsis under the recent interpretation by the Maryland Real Estate Commission of whether a seller's agent conducting the open house is required to give the written agency disclosure to a prospective buyer at the time of the open house or whether a buyer's agent who accompanies a buyer client to the open house is required to give the seller's agent conducting the open house a written agency disclosure form at the time of accompanying the buyer to the open house. Finally, the Maryland Real Estate Commission has also addressed the issue of whether a buyer agent is required to give the written agency disclosure form when showing property to a buyer client where the seller or seller's agent is at the property at the time of the showing.

The following is a synopsis in a question/answer format on these three issues.

A. THE OPEN HOUSE

- 1. Question: I am a seller's agent holding an open house. Am I required to give written agency disclosure to a prospective buyer at the open house?**

Response by the Maryland Real Estate Commission:

“You are a seller's agent at an open house. A prospective buyer starts to look around, but does not ask any questions or engage you in conversation. At this point, you do not need to provide the Agency Disclosure form. If the potential buyer begins to ask questions or disclose possibly confidential information, however, you must then provide him or her with the form before continuing the discussion.”

- 2. Question: I am a buyer's agent attending an open houses with my buyer client. Am I required to give written agency disclosure to the seller or the seller's agent at the open house?**

Response by the Maryland Real Estate Commission:

“You are a buyer's agent attending an open house with your client. Since there is no face-to-face meeting scheduled, you are not obligated to present the seller or seller's agent with the Agency Disclosure form. However, if your client expresses interest in the property during the open house, you must provide the Agency Disclosure form to the seller or the seller's agent at that time.”

B. WHEN SHOWING PROPERTY

- 3. Question: I am a buyer's agent showing property to my buyer client. Am I required to give written agency disclosure to the seller or seller's agent at the time of the showing?**

Response by the Maryland Real Estate Commission:

“You are a buyer's agent showing a property to your client at a scheduled appointment. If the seller (or seller's agent) is present at the showing, you must provide him or her with a copy of the Agency Disclosure form.”

In conclusion, the interpretation of the Maryland Real Estate Commission clearly requires the agency disclosure under the circumstances described in the three issues above. Accordingly, REALTORS® should be sure to have available to them at the open house or when showing property blank agency disclosure forms to implement and comply with the interpretations of the Maryland Real Estate Commission. The bottom line in quite simple ... you must give agency disclosure and you must have in your possession, either on your person or in your car, at all times, the current blank agency disclosure form for your use when conducting an open house, showing property to a buyer client, either at the open house or at a scheduled showing.

(By Alvin C. Monshower, Jr., Monshower, Miller & Magrogan, LLP, general legal counsel for the Maryland Association of REALTORS®, Inc. This article is intended to be a general discussion of the topic. As with all legal matters, the reader should consult with competent legal counsel regarding any actual situations or questions.)