



Policy: Conducting an open house for another brokerage

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Common law brokerages

If an industry member from one brokerage conducts an open house for an industry member of another brokerage, he/she is deemed to know, by association, the seller's information, motives, price, etc. If the assisting industry member is licensed with a brokerage that practices common law agency, the brokerage is also deemed to know. This scenario is considered a sub-agency relationship.

As a result, it may represent a conflict for the assisting industry member (or his/her brokerage) to represent a buyer in a sole agency relationship for that property during the course of the sub-agency relationship.

In acquiring the assistance of another brokerage to conduct an open house, the listing brokerage is delegating a sub-agent to assist in the performance of some of the acts the former must perform for the client. Given the constraints on a listing brokerage's power to delegate (especially so when in a fiduciary relationship, as is a listing brokerage), seller/client consent to the sub-agency is necessary. The consent needs to specify what the assisting brokerage is required to do and indicate when the agreement expires. The sub-agency agreement's expiry date does not necessarily have to correspond with the expiry date of the initial seller brokerage agreement.

Again, this sub-agency precludes the sub-agent from freely entering into sole agency relationships with potential buyers for the property.

For example, if common law brokerage (A) wants common law brokerage (B) to conduct an open house at (A's) listed property, (A) must obtain written consent from the seller allowing this. The consent needs to define brokerage (B's) role and must also be signed by an authorizing signatory of brokerage (B).

This written consent can be in a form of an addendum/amendment to the seller brokerage agreement. It requires the seller's authorizing signature, brokerage (A's) authorized signature and brokerage (B's) authorized signature. Any offers to purchase must state that listing brokerage (A) and sub-agent brokerage (B) have an agency relationship with the seller.

Suggested wording for addendum/amendment:

The Seller agrees that [Industry Member Name] of [Brokerage (B) Name] will conduct an open house for the property known as [address and PID] . [Brokerage (A) name] will be responsible for advertising but the industry member from [Brokerage (B) Name] who conducts the open house must display their brokerage sign during the open house. Industry members from [Brokerage (B) name] must not enter into a sole agency agreement with any potential buyer of the subject property for the duration of this sub-agency agreement.

Effective date: _____

End date: _____

Signature of Brokerage Representative (A) _____

Signature of Brokerage Representative (B) _____

Seller's Signature _____

If the sub-agent subsequently wants to represent a buyer in a sole agency relationship, the sub-agency agreement must be expired or cancelled by mutual agreement.

Common Law & Designated Agency Brokerages

If the listing brokerage is common law and a designated agency brokerage is asked to participate in an open house (or vice versa) on a listing, the required protocol is more complicated.

Going back to basics, when a seller decides to co-list with two common law brokerages, only one seller brokerage agreement is required. Both brokerages and the seller sign it. If however one of the brokerages is a designated agency brokerage, the seller must complete two seller brokerage agreements (one for each business model). The reason is that the seller is entering into an agreement with two completely different agency models.

Entering into sub-agency for the purpose of having another brokerage with a different agency model conduct an open house presents the same requirement (i.e. sign two seller brokerage agreements, one common law, the other designated agency).

Unlike the sub-agency involving two common law brokerages where the agreement may take the form of an addendum/amendment to a common law seller brokerage agreement, the sub-agency involving a common law brokerage and the designated agency brokerage necessitates the use of a separate written agreement between the brokerages identifying the specific roles of the common law brokerage and the designated brokerage and designated agent.

This arrangement may also occur between two designated agents within the same brokerage. In such cases the broker would designate the second agent by amending the initial seller designated brokerage agreement.

In all cases, where a sub-agency agreement either expires naturally or is cancelled by mutually agreement prior to expiry, the sub-agent must inform all potential buyers of the subject property that he/she cannot disclose to the buyer certain information concerning the seller obtained from seller in sub-agent's previous role where sub-agent comes into possession of the information because of his/her previous role with seller (e.g. if seller had told sub-agent in confidence about his motives for selling sub-agent could not tell the buyer – but if seller's motives subsequently became know to sub-agent through another non-confidential source sub-agent could tell buyer).