

September 19, 2016

Why saying too much to a real estate agent at an open house can get you into trouble



Have you ever visited an open house and chatted with the agent about your house-hunting needs and goals? You just showed your cards to the agent representing the seller.

Beginning Oct. 1, Maryland is rolling out a new law requiring agents to post a conspicuous warning to you at an open house. The warning? Talk less.

But that is exactly what most visitors do at an open house — you strike up a conversation with the agent.

And most agents at an open house will attempt to engage you in a conversation. They are not spending their Sunday afternoons at an open house just for fun. They are there to get the house sold.

Currently, agents working in Maryland are required to immediately present open house visitors with the form “Understanding Whom Agents Represent” when buyers first show interest in the house and start asking specifics. The visitors are asked to sign it.

This form defines the various types of agency — seller’s agent, buyer’s agent, presumed agent and dual agency — with the goal of educating buyers on their rights and on the duties and loyalties of the agent.

But this can be difficult and cumbersome for an agent at a busy open house. The meaning of the form may not be communicated thoroughly and explicitly in an open-house environment. Moreover, it can be off-putting to sign a document that you are given seconds to review.

Thus, most open house visitors are unaware of the risks of divulging too much information to the agent.

This summer, Maryland amended the Maryland Real Property Brokers Act to improve the way agency relationships are communicated to consumers. This is the first change in Maryland agency law since 1999.

Under the new law, agents will be required to prominently display a notice, provided by the Maryland Real Estate Commission, at the open house.

“This is to advise you that the agent who is conducting this open house represents the seller and is required by law to promote the interests of the seller,” the notice states. “Any information you give this agent is not considered confidential and could be disclosed to the seller of this property.”

According to Kathleen Dartez, director of legal affairs at the Maryland Association of Realtors, the goal of this change is to provide clarity on who represents whom.

“There was overwhelming agreement to make this change,” Dartez said. “Buyers should not be confused about who is working in their best interest.”

The new law also as of Oct. 1 eliminates use of “presumed agency.” When a buyer asks a real estate agent for assistance in finding a home, that agent is then presumed to be representing the buyer even if no buyer agency agreement is signed.

The hole in presumed buyer agency occurred when a presumed agent showed a house to a buyer that was listed by the agent’s broker. In that case, the presumed agent was actually representing the best interest of the seller, not the buyer.

For example, let’s say a person is working with ABC Real Estate and is a presumed agent for a buyer. If that agent shows the buyer a listing with ABC Real Estate, they are actually representing the best interest of the seller of that house.

Another shortcoming of presumed buyer agency affected agents. Although an agent might show a buyer houses, they had no protection from a buyer writing an offer on that house with another agent. That would cause the initial presumed agent to lose out on the commission.

“By putting this new law in place, we circumvent this whole issue,” said Jill Michaels of Michaels Title and Escrow based in Potomac, Md. “It helps the public and the agent.”

“Now, either a buyer wants representation or they don’t,” Michaels added. “If you don’t, let’s make this clear that no one is looking out for your best interest.”

What do these changes mean for the consumer?

First, you will be reminded at each and every open house you enter to be careful about what you say to whom.

I would suggest, however, that you not build a wall between you and the open house agent. They can be very good sources of information. You should simply refrain from offering pertinent information, such as your ability to purchase, how much you can afford to pay and how desperate you are to buy a house. Keep that information between you and your agent.

The other repercussion to the consumer is that most agents will, and should, require you to sign a buyer agency agreement before showing you any properties.

The upside to signing a buyer agency agreement for the buyer is that your best interest will be represented in a real estate transaction. For the agent, it ensures that they get paid for their expertise and time.

The issue with buyer agency agreements comes when a buyer is nervous about signing a document with an agent that they just met.

“The way to attack this situation is to sign an agreement that lasts only one day or a weekend,” Michaels said. “Or, you can sign for a specific list of homes.”

By signing a limited agreement, you are given the opportunity to get to know the agent. What’s more, the agent is required to keep confidential your personal information indefinitely, even after the agreement has expired. And the agent is protected for the properties that they have shown to you.

If you are not satisfied with the agent, you can move on to another one.

We have come a far distance from the early 1990s, when all agents represented the seller and caveat emptor (let the buyer beware) ruled.

The recent changes to the Maryland law are another step forward in creating equal footing between the buyer and seller in a real estate transaction.