

Open Houses in a Post-NAR Settlement World

Q: Can a listing agent hold an open house after the implementation of the NAR Settlement?

Yes. Nothing in the NAR settlement precludes hosting an open house.

Q: Is an agent holding an open house required to have every visitor who enters the open house sign either a sign-in sheet, a non-agency agreement or a buyer representation agreement?

Whether any of these documents are required depends on the interaction of the agent and the visitor. But ideally, the listing agent will have one of these types of forms signed for the purpose of clarifying the relationship.

Q: What forms can be used for the purpose of clarifying the relationship?

There are four forms that can be used: the Open House Visitor Non-Agency Disclosure and Sign-In (C.A.R. Form OHNA-SI); the Buyer Non-Agency Agreement (C.A.R. Form BNA); the Buyer Representation and Broker Compensation Agreement (C.A.R. Form BRBC); and the Property Showing and Representation Agreement (C.A.R. Form PSRA).

Q: Should all visitors to the property sign in using the OHNA-SI?

This is the best practice. Ask all adult visitors to sign in. By doing so, the visitor will be acknowledging that the agent at the open house is acting on behalf of the seller and is not representing the buyer. The visitor also can use the OHNA-SI to identify if they are working with another agent.

Q: What if the listing agent finds out that the visitor (who is not already in an exclusive agency) would like to create a working relationship with the agent?

In that case, the agent may want to ask the visitor to sign either a limited or a full buyer representation agreement. For limited buyer representation, the PSRA form can be used at open houses (but it is not limited to open house properties). For full buyer representation, the Buyer Representation and Broker Compensation Agreement (C.A.R. Form BRBC) may be used.

Q: Is a separate OHNA-SI form required for each buyer?

No. More than one buyer can sign one form. The OHNA-SI has seven signature blocks.

Q: What if the visitor refuses to sign anything but instead only wants to look at the property?

Whether a prospective buyer signs an OHNA-SI or not, they are welcome to come into the open house and view the property. Signing the OHNA-SI is not a condition of entering the open house.

However, in that circumstance it is advisable for the open house agent to be guarded in their discussions. You do not want to create an implied agency. Merely talking to the buyer while making it clear that you are representing the seller exclusively likely does not constitute “working with a buyer” which would require a written buyer agreement. But since there is no clear point at which “talking” to a visitor becomes “working” with them, caution would be prudent. A more conservative approach is for the listing agent to provide no information to the visitor beyond what is on the listing agent’s information sheet unless and until the OHNA-SI or BNA is signed.

If another agent within the listing office is at the open house, should they also ask buyer to sign in using the OHNA-SI?

Yes. This applies to every agent within the listing office, since every agent within the brokerage at the open house would be attempting to find a buyer for that property.