

OPEN HOUSE PROTOCOLS WITH NAR'S LAWSUIT FINALIZATION



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REAL ESTATE TIP**

NOW THAT THE NAR LAWSUIT IS SETTLED, THERE IS MORE CLARITY TO CERTAIN OPEN HOUSE PRACTICES. HERE'S WHAT CAR LEGAL WANTS US TO KNOW:

Can I host an open house for outside brokers?

No. Not because a law or regulation explicitly states you can't (it doesn't), but because you may be held liable for other reasons involving real estate activities. Only agents within the same brokerage may share open house opportunities.

* **The Business and Professions code 10137** states "licensed activity must be conducted in association with your own broker and agents." **Conducting an open house is considered "a licensed activity."**

* **California civil code 2725** states "brokers must supervise their agents." **The DRE interprets this to mean "all license activities must be done under your brokerage where your broker has supervision and authority."**

OTHER LIABILITY ISSUES:

The agent risks subjecting him/her-self and their Broker to a civil suit without written Seller authorization. Proper written authorization would be a contract that names both brokerages in partnership.

Marketing confusion: creating confusion in the marketplace violates consumer protection laws, and DRE rules. (Example: Listing agent has a for sale sign in the yard that shows Chou Team. Open house signs show ReMax.)

E&O insurance: E&O is professional liability insurance designed to protect employees and employers against clients' claims of negligence, or inadequate work. Most E&O companies are disclosing that open house violations such as this will not be covered if the broker is sued or if there's a complaint.

SOLUTIONS



Option 1: Don't allow outside agents to conduct an open house.



Option 2: Add Broker as a co-listing agent using CAR form ABA

Take away: While open houses are not explicitly written into the law, **The Business and Professions Code 10137** is a law that broadly encompasses all real estate activities to include the NAR lawsuit requirements. If an agent is found to have violated the professional code, they may face disciplinary actions from the board, the DRE, and potentially court sanctions if a lawsuit is filed.



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