



STATE OF NEW YORK  
**DEPARTMENT OF STATE**  
ONE COMMERCE PLAZA  
99 WASHINGTON AVENUE  
ALBANY, NY 12231-0001

DAVID A. PATERSON  
GOVERNOR

LORRAINE A. CORTÉS-VÁZQUEZ  
SECRETARY OF STATE

October 13, 2009

Doreen J. Spagnuolo  
Staff Counsel  
The Long Island Board of Realtors  
300 Sunrise Highway  
West Babylon, NY 11704

Re: Agency Disclosure Form

Dear Ms. Spagnuolo:

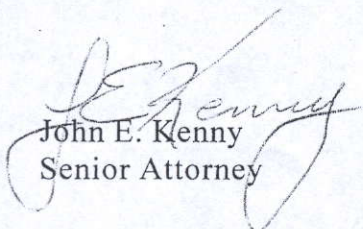
Your inquiry regarding the above noted issue has been forwarded to me for a response. The issue under consideration questions at what point during an open house must the agency disclosure form be presented and signed. The statute requires that the disclosure form must be given at the time of the first substantive contact.

As you know, the statute does not define the term substantive contact. The term itself would seem to imply some type of educated judgment call on behalf of the broker involved with the open house. With that said, any communication between a broker/salesperson and buyer wherein the price, condition of the house, school districts and taxes are part of the discussion would certainly seem to trigger the first substantive contact concept.

Without the benefit of a black letter rule a broker/salesperson will be required to use their education and experience in sorting out the prospective buyer from a bon fide buyer. The concern here involves a salesperson with limited experience who may not be able to distinguish as readily between a prospective buyer and a buyer who is serious about entering into an offer for purchase or a sales contract. It is assumed that such an inexperienced salesperson would have the benefit of having access to an experienced supervising broker or salesperson who can provide advice and give instruction on presenting the agency disclosure to a bona fide buyer at the time it is needed.

If you have any questions about the foregoing please feel free to contact me.

Sincerely,

  
John E. Kenny  
Senior Attorney