

THE BRBC: SCOPE OF REPRESENTATION GET IT RIGHT SO YOU CAN GET PAID!

To help members get ready for upcoming practice changes resulting from the NAR settlement, C.A.R. is preparing a series of fact sheets about the various revised and new forms that REALTORS® will need in a real estate transaction once the new MLS policies are effective August 17, 2024. You can find other fact sheets in this series at www.car.org/riskmanagement/brokercompliance.

In this fact sheet on C.A.R.'s Buyer Representation and Broker Compensation Agreement (C.A.R. Form BRBC), we discuss an important issue – the scope of an agent's representation of a buyer. Why is this important? Because, among other things, the scope of representation can affect your right to compensation!

There are two main things to keep in mind when discussing the scope of representation. The first is the length of the representation period. The maximum representation period allowed under the BRBC is 3 months, unless the buyer is a corporation, limited liability company, or partnership. Effective January 1, 2025, California law will also impose a 3-month limit on the term of a buyer-broker agreement.

However, the representation period may be extended for an additional 3-month (or less) period by using a modification agreement, such as C.A.R.'s Modification of Terms – Buyer Representation Agreement (C.A.R. Form MT-BR). Subsequent extensions are also permitted.

The second thing to keep in mind is the definition of the property to be acquired. The BRBC contains various fields for you to set forth the parameters of the property that the buyer is interested in. This includes the property type (e.g., single family residential, vacant land, etc.), location (e.g., counties and cities), and any other additional criteria, such as price range. Striking a balance between a definition that is too narrow and too broad is important. If the definition is too narrow, it may be very difficult for you to find a property for your client that would also entitle you to compensation. If the definition is too broad (such as "any property in the state of California"), a court may find that the definition is not enforceable.

These are important considerations because a prerequisite to a buyer's broker earning the right to be paid is that the buyer must enter into an agreement to acquire the defined property during the representation period. For example, if the defined property is single family residential and the buyer ends up purchasing a duplex, the broker would not be contractually entitled to compensation. Likewise, if the buyer enters into an agreement to acquire the property after the representation period has already ended, the broker would not be entitled to compensation unless a protection period has been included in the agreement. (A protection period, which is an option available in the BRBC, allows the broker to get paid if, within a set number of days after the expiration of the representation period, the buyer enters into an agreement to acquire a property for which there was broker involvement.)

C.A.R. will release a revised version of the BRBC in late June 2024, which will contain terms that reflect the NAR settlement. Be sure to check car.org frequently for updates and new resources about the BRBC.

THE BRBC: HOW DO BUYER BROKERS GET COMPENSATED

To help members get ready for upcoming practice changes resulting from the NAR settlement, C.A.R. is preparing a series of fact sheets about the various revised and new forms that REALTORS® will need in a real estate transaction once the new MLS policies are effective August 17, 2024. You can find other articles in this series at <https://www.car.org/riskmanagement/brokercompliance>.

In this fact sheet on C.A.R.'s Buyer Representation and Broker Compensation Agreement (C.A.R. Form BRBC), we discuss an issue that is near and dear to most people's hearts – compensation.

Once the new MLS policies go into effect, offers of cooperative compensation will be prohibited on REALTOR®-owned MLSs. As such, many agents are wondering about how they'll get paid. But don't worry! Even without the MLS, there are still four ways in which a buyer's broker can get paid, and corresponding C.A.R. forms that can be used for each method. Keep in mind that these methods are not mutually exclusive; in any given transaction, more than one of the methods may be used.

METHOD	C.A.R. FORM(S) TO USE
The buyer pays the compensation through a buyer representation agreement.	Buyer Representation and Broker Compensation Agreement (C.A.R. Form BRBC)
The buyer negotiates for the seller to pay the compensation that the buyer owes the buyer's broker pursuant to the buyer representation agreement.	Residential Purchase Agreement (C.A.R. Form RPA) and Seller's Payment to Buyer's Broker (C.A.R. Form SPBB)
The seller's broker pays the compensation to the buyer's broker.	Cooperating Broker Compensation Agreement (C.A.R. Form CBC)
If the seller is unrepresented, the buyer's broker can contract directly with the seller for payment.	Single Party Compensation Agreement (C.A.R. Form SP)

Determining how you'll get paid is one matter, but how do you ensure that you'll actually receive the funds? This is taken care of through escrow. Buyer's brokers will need to provide a copy of their compensation agreement(s) (such as the BRBC and/or the CBC) to escrow, and the funds will be disbursed upon close of escrow.

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THE BRBC: EXCLUSIVE OR NON-EXCLUSIVE?

MAY 10, 2024

In anticipation of the upcoming practice changes resulting from the NAR settlement, C.A.R. is releasing a series of short articles about C.A.R.'s Buyer Representation and Broker Compensation Agreement (C.A.R. Form BRBC). In this article, we discuss the differences between exclusivity and non-exclusivity when using the BRBC.


Under the BRBC, a broker and a buyer can enter into an exclusive or non-exclusive relationship. The BRBC defaults to non-exclusive representation, though the parties may opt to select exclusive representation instead.

There are two main differences between exclusivity and non-exclusivity:

	Exclusive	Non-Exclusive
Right to compensation	The broker is entitled to compensation if, during the term of the contract, the buyer purchases a property that fits the contract's parameters (e.g., single-family home, duplex, etc.), whether or not the broker was involved. The broker would get paid even if the buyer acts alone or with a different broker, so long as the other requirements are met.	The broker is entitled to compensation if, during the term of the contract, the buyer purchases a property that fits the contract's parameters AND there was broker involvement. (See below for an explanation of what "broker involvement" means.)
Cancellation	Unilateral cancellation (i.e., a cancellation by one party) is effective 30 days after receipt of the cancellation notice.	Unilateral cancellation is effective immediately upon receipt of the cancellation notice.

As noted above, in order for a broker to receive compensation in a non-exclusive relationship, there must be broker involvement. "Broker involvement" means any of the following:

1. The buyer physically entered and was shown the property by the broker;
2. The broker showed the property to the buyer virtually;
3. The broker submitted to the seller a signed, written offer from the buyer to acquire, lease, exchange, or obtain an option on the property;
4. The broker performed a market analysis related to the property or reviewed property-specific documents or disclosures with the buyer; or
5. The property was introduced to the buyer by the broker, or the property was one for which the broker acted on the buyer's behalf.



Merely sending the buyer a list of properties is **not** deemed broker involvement without documented action on the part of the broker analyzing the property for the buyer specifically, assisting the buyer in the potential acquisition of the property, or communicating with the seller or seller's agent about the buyer's potential acquisition of the property.

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Open Houses in a Post-NAR Settlement World

A practice change required by the NAR settlement is that all MLS participants working with a buyer must enter into a written agreement before the buyer tours any home. This has raised questions about how agents should handle visitors to open houses. To help members be prepared, C.A.R. has created this FAQ about how to hold open houses in a post-NAR settlement world.

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

Yes.

Can another agent in the same brokerage company as the listing agent hold an open house for the listing agent?

Yes.

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

The answer varies depending on the type of relationship (if any) that the agent and visitor desire to enter into. And good news – C.A.R. has 3 different forms to help with these different situations!

The best practice is to ask adult visitors to sign in. Starting in late June 2024, if C.A.R.'s new Open House Visitor Non-Agency Disclosure and Sign-In (C.A.R. Form OHNA-SI) is used, 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, so the open house agent or listing agent will know who to contact about future discussions about the visitor's interest in the property.

If the open house agent finds out that an unrepresented visitor would like to create a working relationship with the agent, the open house agent may want to ask the visitor to sign either a limited or a full buyer representation agreement. The new Limited Property Representation and Broker Compensation Agreement (C.A.R. Form LPRBC) will be released in late June 2024 and would only apply to the open house property, can last no longer than 30 days, and is non-exclusive only. The Buyer Representation and Broker Compensation Agreement (C.A.R. Form BRBC) can apply to the open house property only or multiple properties, can last for up to 3 months (but may be extended), and may be either for exclusive or non-exclusive representation.

If the visitor refuses to sign anything but instead only wants to look at the property, then it is advisable for the open house agent to refrain from providing any information about the property other than what is on the information sheet prepared by the listing agent. Engaging beyond that may lead the visitor to believe that the open house agent is acting as their agent. If the visitor asks for information beyond what is contained in the information sheet, the open house agent should tell the visitor that they cannot provide such information unless the visitor is willing to sign in.



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