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Legal Update

BUYER REPRESENTATION AGREEMENTS -- MISCONCEPTIONS AND CORRECTIONS

There are lots of misconceptions out there about the new buyer representation forms and especially a new provision that was added to the RPA in December 2022. This article attempts to correct some of those common misconceptions.

Misconception # 1. Buyer representation agreements are required by law starting with the December 2022 release of new C.A.R. forms.
False. Buyer representation agreements are good risk management but are not legally required.

Misconception # 2. New paragraph 3G(3) in the December 2022 RPA which asks the seller to pay a commission to the buyer's broker is

mandatory.

False. Paragraph 3G(3) is optional. If the box is not checked, it will not be part of the agreement. Furthermore, it is important to understand that the buyer can make this request only if two conditions are met:

- First, the buyer must have already entered into a written agreement to pay their own broker (Form BRBC, Broker Representation and Broker Compensation Agreement) and
- Second, that buyer commission obligation exceeds the amount that is offered in the MLS.

Even if the above two conditions are met, a buyer's request that the seller pay his own agent's commission would still be optional.

Misconception # 3. If paragraph 3G(3) is checked, the seller must pay the buyer's broker.

False. The seller can counter out that term, just like a seller can counter out any other term in a buyer's offer.

Misconception # 4. If the seller agrees to paragraph 3G(3), the seller must pay the entire buyer's broker's commission.

False. The seller is only agreeing to pay the difference between what the buyer's commission obligation and what the listing broker has agreed to pay the buyer's broker through the MLS, or otherwise. For example, if we assume that the buyer has agreed to compensate their own agent 3%, but the MLS offer of compensation is only 2%, then the buyer may use 3G(3) to request the additional 1% from the seller.

Misconception # 5. If the seller agrees to paragraph 3G(3), the seller no longer has to pay their own listing broker.

False. The seller's obligation to pay their own broker pursuant to a listing agreement is unaffected by 3G(3).

Misconception # 6. If the seller agrees to paragraph 3G(3), the listing broker has no obligation to pay the buyer's broker.

False. The listing broker's obligation to pay a cooperating broker

pursuant to the MLS is unaffected by 3G(3).

Misconception # 7. Paragraph 3G(3) violates the NAR Code of Ethics and MLS Rules which prohibit an agent from using the terms of an offer to try to modify the MLS offer of compensation. It is also an interference with exclusive agency relationships.

False. Standard of Practice 16-16 of the NAR Code of Ethics only prohibits a buyer's broker from using the offer to modify the listing broker's offer of compensation through the MLS. It does not prevent the buyer from making a request under 3G(3). In fact, there is an NRA published case interpretation which addresses this scenario ([See NAR Case Interpretation #16-17](#)).

Misconception # 8. Listing brokers no longer have an obligation to offer compensation to buyer's brokers through the MLS.

False. Model MLS Rule 7.12 requires a listing broker to make a unilateral offer of compensation to other MLS Broker Participants. However, there is no minimum amount or percentage that is required. That rule has not changed.

Misconception # 9. This is a new and dramatic change to how commissions work in the real estate industry.

False. Buyer's agents have always been able to enter into buyer representation agreements with buyers and many already do. Some agents have already incorporated this buyer commission cost into the agreement already in the form of seller credits. 3G(3) provides more transparency and a straightforward spot in the agreement to ask for that expense to be paid, similar to other costs in the transaction.

This article was adapted from our Quick Guide "[Buyer Representation -- Misconception Corrections](#)."

Want to be featured on the car.org homepage?



Take a Seat on car.org

If your agents would like the opportunity to be part of an upcoming photoshoot, we'd love their help!

All C.A.R. members are encouraged to apply regardless of their location! The photoshoot will take place in the spring of 2023. Additional info regarding the specific location and photoshoot dates will be provided when applicants are notified to confirm their availability.

Applicants will be selected at random and those selected will be contacted with more details.

[Click here to apply and learn more.](#)

PROPERTY MANAGEMENT CONFERENCE

VIRTUAL EVENT
FEBRUARY 23, 2023
9 AM - 12:30 PM (PACIFIC)
\$19 FOR C.A.R. MEMBERS



Register Now: C.A.R.'s Property Management Conference

Ready to start the new year off with new opportunities to grow your business and increase your revenue streams? C.A.R. is hosting a virtual conference to introduce, educate and inform on hot topics regarding property management. You and your agents can sign up now for C.A.R.'s Property Management Conference on Thursday, February 23 from 9:30 AM to 12 PM. This half-day virtual conference will provide you with an opportunity to hear from leading names in property management on how they built their business, key guidance from leaders in the property management industry, and how to find resources to support your property management business. Tickets are only \$19 and include on-demand replays to watch at your convenience.

**REGISTER
NOW**



Inaugural Meeting of the Broker Exchange Forum

You are invited to attend the inaugural meeting of the Broker Idea Exchange Forum. This will be a fantastic opportunity to have an exchange of ideas with other brokers on issues that are relevant to everyone. If you have not yet completed the Broker Idea Exchange survey, we would love your input on topics that you would like discussed. The Broker Idea Exchange Forum is scheduled to take place at the Hyatt Regency in Indian Wells on Tuesday, February 7th at 1pm. [Submit your thoughts here.](#)



Latest Market Statistics

Existing, single-family home sales totaled 240,330 annualized in December, up 1.1 percent from November and down 44.1 percent from December 2021.

The statewide median home price for December was \$774,580 down 0.4 percent from November and down 2.8 percent from December 2021.

The unsold inventory index in December was 2.7 months, down 18.2 percent from November and below the long-run average of about 7 months.

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Unleash Your Rental Superpowers

The California Rental Listing Service, powered by Rental Beast has joined REALTOR® Secure Transaction to provide all C.A.R. members with free access to rental-centric tools. Easily search rental inventory, add and edit rental listings, and screen tenants with a single solution available directly from the RST dashboard. Learn more about this free C.A.R. member benefit, access education and training, and see rental market data today.

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Industry Leader Town Halls

Brokers from across the state meet virtually twice each month with C.A.R. Leadership, Member Legal, C.A.R.'s Legislative Team, and others to share the latest information impacting real estate brokerages. Friday, December 9th we will go in depth on the new forms that will impact real estate transactions in 2023. If you are a broker and interested in joining us on these calls, please email your information to Paula Green at paulag@car.org.