

# ARE YOU NEW TO THE BRBC? DON'T BE INTIMIDATED!

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Increasingly, C.A.R. members who represent buyers are deciding to incorporate buyer representation agreements into their daily practice. Of course, if this is a new addition to your practice, it may take some time for you to become familiar with the various terms and provisions contained in the C.A.R. Buyer Representation and Broker Compensation Agreement (C.A.R. Form “BRBC”). Fortunately, C.A.R. has many resources for members on this topic, including: legal Q&A “Buyer Representation and Broker Compensation Agreement”; Quick Guide “Buyer Representation Agreements: How They Work for You”; webinar “Buyer Representation Forms”; and education course “Buyer Representation Forms - Online Anytime.”

After you’ve familiarized yourself with the basics of the BRBC form (which establishes a mutual agreement between the buyer and their broker, defines the scope of tasks and duties to be performed by each party, and confirms the terms of the broker’s compensation), it’s possible you may feel a little unsure about how to begin talking to your buyer clients about the BRBC. This should not be an intimidating process! Below are answers to four of the most common questions from buyer’s agents:

## 1. HOW DO I ASK THE BUYER TO EXECUTE A BRBC, ESPECIALLY WHEN THERE MAY BE OTHER AGENTS WHO ARE NOT REQUESTING SUCH AN AGREEMENT FROM BUYERS?

This is an opportunity to really show your value proposition. When you discuss the BRBC with the buyer, you can provide the buyer with a description of your special talents, personal strengths, skills, dedication, and experience. In addition to highlighting your positive attributes, you can use this discussion to get to know the buyer better and focus on the buyer’s particular needs. By talking about your commitment to work with the buyer and your expected compensation, you can differentiate yourself from others who might be less prepared to discuss their value proposition. Buying a home is a complicated process and is often one of the biggest financial transactions of the client’s life. It can be very advantageous for buyers to work with an agent who is contractually committed to the buyer and who takes the time up front to explain the agent’s strategy and process for obtaining a successful result for the buyer. When the parties enter into a BRBC—whether it be exclusive or non-exclusive—they have a better understanding of who they are working with and each person’s duties and responsibilities, and they are thus more committed to working together toward a successful outcome.

Both you and the buyer benefit when the terms of the relationship and duties are spelled out instead of being more loosely established by verbal representations, conversations, and actions. Clarification of the responsibilities and limitations helps to set proper expectations and works to everyone’s advantage.

## 2. HOW DO I EXPLAIN THE BUYER’S OBLIGATION TO PAY FOR MY SERVICES?

After you explain your value proposition, you should proceed with an honest and transparent discussion with the buyer about how you will be paid for your work in representing the buyer. The compensation is negotiable between you and the buyer. You may explain the BRBC’s paragraph 4D, which contains default language stating that if the buyer’s broker receives compensation from another source, then any amount they receive will reduce the amount that the buyer is obligated to pay. It is often the case that sellers’ agents will agree to pay some amount of cooperative compensation to the buyer’s agent. If they do, then payment from the seller’s agent will act as a credit towards the buyer’s obligation to pay compensation to their own broker.

Remember, the BRBC's compensation paragraph can be negotiated in a variety of ways. As a buyer's agent, you may decide to ask for the full amount of compensation that you prefer and expect to be paid for your expertise and services. As an alternative, some may decide to insert "zero" for the compensation amount because they hope to get paid by the seller's agent. This is risky, however, as it provides little protection for the buyer's broker. Another possible alternative is to determine a minimum amount of compensation that you feel comfortable accepting for the work you anticipate completing while representing the buyer. With this approach, you should explain that the default language in the BRBC's paragraph 4D (2) states that if compensation received from other sources exceeds the amount that the buyer is obligated to pay you, the excess amount will belong to you. Of course, you and the buyer are free to discuss and negotiate different ways to structure payment for your services, such as a flat fee or other type of fee structure based on your time and expenses.

### 3. HOW DO I ADDRESS POSSIBLE BUYER CONCERNS ABOUT BEING "TIED" TO A BUYER REPRESENTATION CONTRACT?

The BRBC contains a default that provides a great deal of flexibility for buyers. The default language states that the contract is a non-exclusive agreement, which means that the buyer can work with any agent they would like. Therefore, if you and the buyer choose to proceed with this default language, then you are only entitled to compensation when you had "Broker Involvement" with the property acquired (i.e., the buyer is only required to pay if you showed the purchased property to the buyer in-person or virtually, or you wrote and presented an offer to the seller that the buyer signed). There is also the option to create an exclusive relationship between you and the buyer, meaning the buyer's broker (you) will be entitled to compensation if during the term of the BRBC the buyer purchases any property that fits the contract's parameters, whether or not there was "Broker Involvement." See BRBC paragraph 4B (1) and 4B (2).

Additionally, it is easy for the buyer to cancel the BRBC if they choose to do so. The default language in paragraph 4C states that either party may cancel the contract by giving written notice to the other. With non-exclusive agreements, the BRBC's default language states that cancellation is effective upon receipt of the notice. In comparison, for exclusive agreements (paragraph 4B (2)), the BRBC's default language states that cancellation will be effective 30 days after receipt of the notice. Finally, you and the buyer can mutually agree to cancel the BRBC at any time.

### 4. HOW DO I DISCUSS THE POSSIBILITY OF THE BUYER REQUESTING THE SELLER TO PAY FOR ANY BUYER BROKER COMPENSATION OWED UNDER THE BRBC?

When reviewing and discussing the BRBC form with the buyer, you should explain the sections in the agreement that allow the buyer to ask the seller to pay your broker compensation. In particular, paragraph 4D (3) in the BRBC authorizes you (the buyer's agent) to include a term in the buyer's home purchase offer that asks the seller to pay for any broker compensation the buyer owes to you (e.g., if your compensation will not be paid through the MLS or a Cooperating Broker Compensation ("CBC") agreement). Additionally, in the Residential Purchase Agreement ("RPA"), paragraph 3G (3) is the section where the seller can agree to pay you (the buyer's broker) under a separate agreement – the Seller Payment to Buyer Broker ("SPBB"). Ultimately, it is the buyer's decision as to whether they wish to make such a request to the seller.

Do you have more questions about using the BRBC? C.A.R. members requiring legal assistance may contact C.A.R.'s Member Legal Hotline at **(213) 739-8282**, Monday through Friday, 9 a.m. to 6 p.m. and Saturday, 10 a.m. to 2 p.m. for active transactions. C.A.R. members who are broker-owners, office managers, or Designated REALTORS® may contact the Member Legal Hotline at **(213) 739-8350** to receive expedited service. Members may also submit online requests to speak with an attorney on the Member Legal Hotline by going to [www.car.org/en/helplines/legal-hotline-access](http://www.car.org/en/helplines/legal-hotline-access).