

A GREAT WAY TO INFORM BUYERS ABOUT THEIR BROKER'S COMPENSATION—THE “ABCS” OF THE ABCD FORM

Practice Tip: The Anticipated Broker Compensation Disclosure (C.A.R. Form “ABCD”) is an excellent way to inform the buyer about the buyer broker’s compensation, and it can help to confirm the parties’ negotiations and discussions about compensation. The ABCD form contains three sections that each serve different purposes. Specifically, the ABCD form will: 1) Inform the buyer that the broker expects to be paid for the broker’s efforts; 2) Identify any compensation offered to the buyer’s broker from the seller’s broker through the MLS or via a Cooperating Broker Compensation Agreement; and 3) Confirm and provide documentation to the buyer of any payments actually received by the buyer’s broker from third parties in the event the buyer closes a transaction.

Following the October 31, 2023, Burnett v. NAR antitrust case verdict (currently on appeal) and many other similar lawsuits filed since then, including in California, members have asked about buyer representation agreements. In addition to using the C.A.R. Standard Form “Buyer Representation and Broker Compensation Agreement” (C.A.R. Form “BRBC”) in transactions, using the ABCD form is a very good way to disclose the details of buyer broker compensation and to help inform the buyer about compensation issues. The ABCD form can also be a useful way to initiate and support discussions and negotiations conducted between the buyer’s agent and the buyer regarding compensation.

When did C.A.R. create the ABCD form? The ABCD form was released in December 2022, along with the release of the BRBC. The C.A.R. Standard Forms Committee recognized that on the seller’s side, it is normally easier for a listing agent to disclose and confirm the listing agent’s compensation via a listing agreement or single-party compensation agreement. Accordingly, at the beginning of the relationship between a seller and their listing agent, the seller knows what they are paying the listing agent, including the amount being offered to the buyer’s agent, if any. The closing disclosure will also confirm the final amount of broker compensation that is a seller expense. In comparison, on the buyer’s side, there are various ways to structure a buyer broker’s compensation – the buyer’s agent might use a buyer representation agreement, a Cooperating Broker Compensation Agreement, obtain a Single Party Compensation Agreement from the seller, or rely on an offer of compensation in the MLS. Also, even within the BRBC, the compensation could be modified by payments from other sources. Because of the variety of methods in which a buyer’s broker can be compensated, which may include an agreement between the buyer’s broker and someone other than the buyer, the C.A.R. Standard Forms Committee decided to create a document where the buyer is advised of, and acknowledges, key information related to the buyer broker’s compensation. Here’s a description of the ABCD’s three sections:

SECTION 1:

Section 1 has information about where the broker’s compensation can come from. It is intended to be given to the buyer up front (early in the agency relationship) so the buyer can review it, ask questions to attain a better understanding of how their broker might be paid, and acknowledge receiving this information.

Compensation will be paid pursuant to a Multiple Listing Service (MLS) offer, a Cooperating Broker Compensation Agreement (C.A.R. Form CBC), or other "Source" specified in the column below. Buyer is aware that any commission paid by Seller, directly or indirectly through Seller's broker, affects the Seller's total costs and expenses for the transaction and may impact the price Seller is willing to accept. If, for a specified Property, Broker has provided Buyer with a copy of a document from the MLS that identifies the compensation offered to a cooperating broker for a listed property, that property may but does not have to be listed below. Broker, independently or through Escrow, will disclose the final compensation Broker receives from anyone other than Buyer.

Buyer's Brokerage Firm _____ DRE Lic # _____
 By _____ DRE Lic # _____ Date _____

Buyer acknowledges that Buyer has read, understands, and received a Copy of this Anticipated Broker Compensation Disclosure. By initialing in the box below, Buyer acknowledges being advised of the Broker's anticipated compensation for the property identified.

Buyer _____ Date _____
 Buyer _____ Date _____

SECTION 2:

Section 2 has a chart to list various properties that are being shown to the buyer, what the expected compensation is and what the source is. It also has a place for the buyer to initial at the time that property is shown.

THIS SECTION TO BE FILLED OUT WHEN THE PROPERTY IS BEING SHOWN OR WHEN AN OFFER IS BEING MADE.

Buyer Initials	Property Address:	Date: First shown Or offer made	Compensation Offered:	Source:
____/____	_____	_____	_____% of Price OR \$ _____	<input type="checkbox"/> MLS <input type="checkbox"/> CBC
____/____	_____	_____	_____% of Price OR \$ _____	<input type="checkbox"/> MLS <input type="checkbox"/> CBC
____/____	_____	_____	_____% of Price OR \$ _____	<input type="checkbox"/> MLS <input type="checkbox"/> CBC
____/____	_____	_____	_____% of Price OR \$ _____	<input type="checkbox"/> MLS <input type="checkbox"/> CBC
____/____	_____	_____	_____% of Price OR \$ _____	<input type="checkbox"/> MLS <input type="checkbox"/> CBC
____/____	_____	_____	_____% of Price OR \$ _____	<input type="checkbox"/> MLS <input type="checkbox"/> CBC

SECTION 3:

Section 3 is a place for the broker to disclose the final amount of compensation earned in the transaction after close of escrow. It has a place for the buyer to initial to acknowledge receipt of this information.

THIS SECTION TO BE COMPLETED UPON CLOSE OF ESCROW WHEN THE FINAL COMPENSATION IS DETERMINED.

FINAL COMPENSATION FROM PERSONS OTHER THAN BUYER: Buyer's Broker has received compensation for Buyer's purchase of property located at _____ as follows:

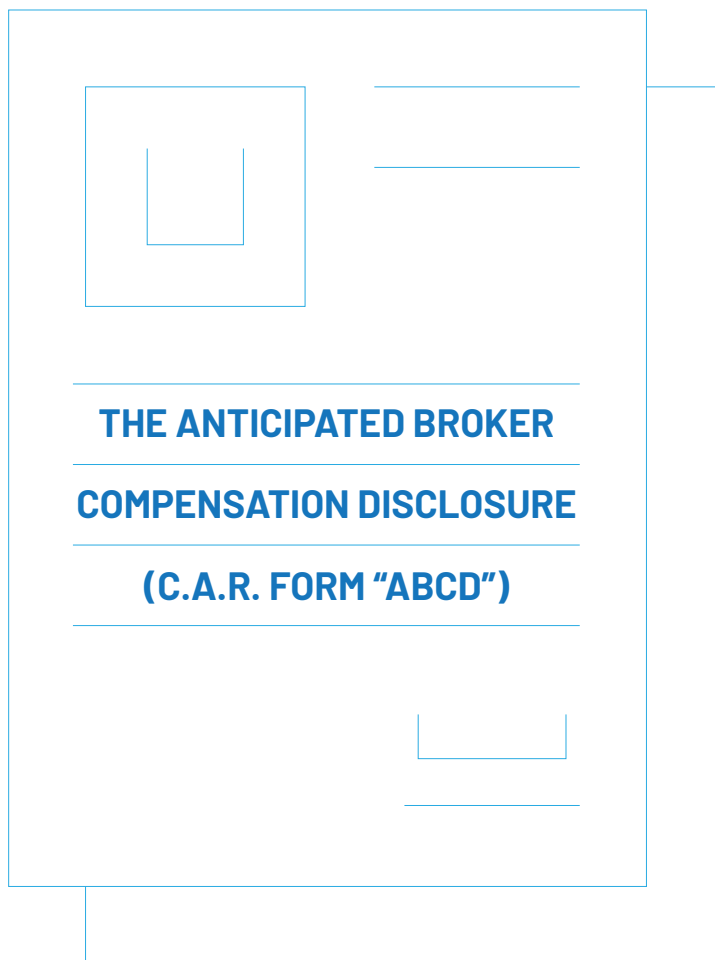
(1) From Seller's broker in the amount of \$ _____; and, if applicable,
 (2) from _____ in the amount of \$ _____.

Buyer's Brokerage (Firm) _____ DRE Lic # _____
 By: _____ DRE Lic # _____ Date _____
 By: _____ DRE Lic # _____ Date _____

(Buyer's initials below are not required but can be used as evidence that Buyer has been notified of the final compensation.)
 Buyer's initials _____/_____

Final Takeaways: Although there are alternative ways for a real estate licensee to inform their buyer client about expected compensation and the final amount of compensation (e.g., by providing the buyer with the non-confidential print-out from the MLS showing the compensation amount; by providing the buyer with a copy of the buyer broker's contract with the listing agent or seller; and/or by providing copies of escrow documents showing the buyer's agent's compensation on the buyer's closing document), using the ABCD may be much simpler and more effective in your practice.

Do you have more questions about the ABCD form? 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.



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