

Broker Compensation for Arranging Leases or Rentals

NAR settlement does not apply to lease or rental transactions. The recent NAR settlement effective no later than August 17, 2024, which prohibits listing agents from offering buyer agent compensation through the MLS applies to sales of residential properties with 1-4 units, NOT leases or rentals of residential property.

MLS removal of offer of compensation applies to all properties and transaction types. When MLSs removed the unilateral offer of compensation, they did so for all properties and all transaction types. Thus, even though the NAR settlement did not prohibit a lease listing agent from using the MLS to offer cooperation to tenant agents, there is no longer a mechanism to do so since the compensation field has been removed.

Tenant agents can use the new form TRBC. Tenant agents can use new C.A.R. form TRBC, Tenant Representation and Broker Compensation Agreement, to document the tenant's agreement to pay the agent for services. Although not common in California, up until now, reports exist that other locations in the U.S. use this model. Like the BRBC for buyer representation, the TRBC contractually commits the tenant to pay if a lease or rental is entered into during the representation. The form also provides that the tenant will have the compensation obligation reduced if the agent receives compensation from a housing provider or others.

Tenant representatives can request housing provider sign form LCA. One way a tenant's agent can request compensation from a housing provider is by using C.A.R. form LCA, Lease/Rental Commission Agreement. If the property is listed for lease or rental, the tenant's agent should give a completed form LCA to the listing agent and request that the form be submitted to the seller before a lease/rental is signed by tenant and the housing provider.

Form LL for lease listing agents does not provide or address offers of compensation. Broker-to-broker compensation language has been removed from the Lease Listing Agreement. However, agents representing housing providers may individually negotiate with tenant's agents for compensation sharing, if authorized by an addendum to the lease listing. In that case, a compensation agreement between the two agents, on behalf of their brokers, would have to be custom made by legal counsel.

Form RLMM recognizes that broker to broker compensation is permitted. Although the lease listing agreement is silent regarding cooperating broker compensation, the broker signature section in the Residential Lease or Month-to-Month Rental Agreement has language acknowledging that the two brokers can cooperate but if they do a separate written agreement needs to be created,

C.A.R.'s Standard Forms Advisory Committee is monitoring lease/rental agreements in this post-NAR settlement era. C.A.R. is unsure what practices will become most common in arranging for leases/rentals and stands at the ready to create or modify forms to enable agents to be paid for performing valuable services to tenants.