

# Buyer Representation Agreements: How They Work for You

This Quick Guide has *not yet* been revised in light of the NAR Settlement, but it is presently accurate and may be relied upon until the NAR Settlement terms are implemented.

It is anticipated that beginning mid-July 2024 the terms of the NAR Settlement will require that agents who are working with a buyer enter into a written agreement *before* the buyer tours any home with the following conditions:

- ✓ The written agreement must conspicuously disclose, the amount or rate of compensation to be received, regardless of the source, or how this amount will be determined.
- ✓ The amount of compensation cannot be “open-ended” but must be “objectively ascertainable.” For example, it cannot be stated as “whatever amount the seller is offering to the buyer.”
- ✓ The agent cannot be compensated more than the amount stated in the buyer representation agreement regardless of the source. For example, if the seller or listing agent is offering payment, the additional commission cannot exceed the amount agreed to in the buyer representation agreement.

The Standard Forms Advisory Committee will likely approve and release as early as May 2024 a new form, the “Broker Compensation Advisory” (Form BCA), which is intended as an attachment to either the Residential Listing Agreement (RLA) or the Buyer Representation and Compensation Agreement (BRBC). For any BRBC form that is signed prior to the release of the BCA it is recommended that it terminate prior the effective date of the Settlement.

## Why Should a REALTOR® Use A Buyer Representation Agreement?

You want your buyer to be as committed to you as you are to them. The C.A.R. buyer representation agreement establishes a contractual and agency relationship between the buyer and the real estate licensee. This relationship may come in handy in the event of a commission procuring cause dispute.

## Why Would a Buyer Agree to Sign a Buyer Representation Agreement?

- The buyer’s real estate licensee representative is committing, in writing, to look out for the buyer’s interests.
- Most buyers have no “out of pocket” costs to pay the buyer’s representative’s fee because compensation is generally paid by the seller.
- The real estate licensee may more actively pursue every possible lead for the buyer because the compensation is not exclusively linked to the amount, if any, the seller’s broker is promising to pay.
- As market conditions change, , working with a real estate licensee that is contractually committed to representing the buyer can help the buyer take advantage of newfound leverage and market realities.

## What types of buyer representation agreements are available?

- C.A.R. Form BRBC, Buyer Representation and Broker Compensation Agreement. The BRBC defaults to non-exclusive representation but may be made exclusive by checking the applicable box. Attached to the BRBC is C.A.R. Form BTA, Buyer Transactional Advisory.
- The following forms supplement the BRBC. ABCD, Anticipated Broker Compensation Disclosure; COBR, Cancellation of Buyer Representation; NBIP, Notice of Broker-Involved Properties; and SPBB, Seller Payment to Buyer’s Broker.

## What should be emphasized to a buyer when presenting the buyer representation forms?

- The forms establish a mutual agreement to work for and with one another.
- Any compensation offered by the seller's broker is credited against the buyer's obligation to pay.
- The term of the agreement may be as long or as short as both parties agree. Some brokers may prefer to start with a short period to get to know the buyer better and find out if the buyer is serious, qualified and compatible with the broker.
- The scope of the agreement can be broad – all single-family residential properties in the County, or narrow – only single-family residential properties with at least 3 bedrooms, 3 baths, priced within a certain range and located within a certain city or community.
- Buyer representation agreements can be modified by mutual agreement (Form MT).
- Signing an agreement is very common for professional services, such as with contractors, lawyers, consultants, accountants, and doctors, even if payment ultimately comes from a third party like an insurance carrier.

**Are buyer representation agreements enforceable?**

Yes, the predecessor to the current buyer representation agreement was enforced by a California Court of Appeal in the 2008 case of Schaffter v. Creative Capital Leasing Group, LLC.