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November 16, 2023

**TOPIC**

- Update on Class Action Lawsuits
- Residential Listing Agreement & Compensation
- Overview on how to use the BRBC, ABCD & SPBB

Featuring Special Guest Speaker: **C.A.R. Assistant General Counsel, Neil Kalin**



## **C.A.R. Activities**

- C.A.R Assistant General Counsel
- Started at C.A.R. in 1987
- Senior legal advisor to Standard Forms Committee
- Author of amicus briefs for Legal Action Fund program
- Instructor for Certified Forms Trainer program
- Public speaker on R.E. law for REALTORS® and attorneys
- Editor of legal section of car.org
- Instructor C.A.R. Real Estate Mediation Center for Consumers
- Teaches DRE-approved RPA class

## **Other Achievements and Accomplishments**

- Graduate (1982) of University of Illinois (BS, Advertising)
- Recipient (1982) of Certificate of Public Accountancy
- Graduate (1985) of UCLA School of Law (J.D.)
- Recipient (NAR, 2001) Certified International Property designation
- Arbitrator, American Arbitration Association (commercial panel)
- Executive Committee Advisor, Real Property Law Section, California Lawyers Assoc.
- Co-Author, Real Property Law Journal
- A Historical Overview, Seller and Broker Disclosures, (2019)

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# Windermere Real Estate LITIGATION UPDATE: CLASS ACTION COMMISSION CASES

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USING STANDARD FORMS TO MINIMIZE LEGAL RISKS

November 16, 2023

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PRESENTED BY C.A.R. ASSISTANT GENERAL COUNSEL AND  
SENIOR LEGAL ADVISOR TO STANDARD FORMS ADVISORY COMMITTEE

**NEIL KALIN**

[neilk@car.org](mailto:neilk@car.org)

# TODAY'S AGENDA

## **Recent Commission Lawsuit**

REALTOR MLS mandatory offer of compensation  
Sellers claim they overpaid because of rule  
Halloween jury verdict for plaintiffs  
NAR intends to appeal.  
New class actions filed  
In the meantime, ...

## **Residential Listing Agreement**

Commissions are negotiable  
Listing broker compensation language  
Cooperating (buyer-side) broker compensation language  
MLS advantage language  
Seller "net sheet" discussion

## **Buyer Representation Forms**

Reasons to Use a buyer representation agreement  
BRBC - Buyer Representation and Broker Compensation Agreement  
SPBB - Seller Payment to Buyer's Broker  
ABCD – Anticipated Brokers Compensation Disclosure

## **Resources**

<https://www.smartzonecar.org/buyers-agent-resources>  
<https://www.smartzonecar.org/what-realtors-do> (184 Things REALTORS® Do)

## **Future of Standard Forms**

Advisory Committee to consider suggestions  
carforms@car.org

right of  
to be best in any re  
point of view.  
**Collusion**  
secret agreement  
illegal or deceitful  
to deceive or cheat  
for what is thoug

## Sitzer/Burnett Class Action (Missouri Federal District Court)

- Lawsuit alleges REALTOR MLS mandatory offer of compensation is price fixing (antitrust violation)
- Sellers claim they overpaid because of rule
  - Buyers claim same thing in different suit.
- Halloween jury verdict for plaintiffs of \$1.8 billion. Tripled to \$5.4 billion
  - That's right, with a B
- NAR intends to appeal.
  - Per se (automatic violation) v. rule of reason (weigh benefits vs. detriment)
- New nationwide class actions filed in several states
- In the meantime, contract with principal, full transparency, articulate your value



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# USING STANDARD FORMS TO MINIMIZE LEGAL RISKS

## Residential Listing Agreement



**RESIDENTIAL LISTING AGREEMENT**  
 (Exclusive Authorization and Right to Sell)  
 (C.A.R. Form RLA, Revised 6/23)

Date Prepared: \_\_\_\_\_

1. **EXCLUSIVE RIGHT TO SELL:** \_\_\_\_\_ ("Seller") hereby employs and grants \_\_\_\_\_ ("Broker") beginning (date) \_\_\_\_\_ and ending at 11:59 P.M. on (date) \_\_\_\_\_ ("Listing Period") the exclusive and irrevocable right to sell or exchange the real property described as 0000 Street St. situated in \_\_\_\_\_ (City), \_\_\_\_\_ (County), California, \_\_\_\_\_ (Zip Code), Assessor's Parcel No. \_\_\_\_\_ ("Property").

- This Property is a manufactured (mobile) home. See Manufactured Home Listing Addendum (C.A.R. form MHLA) for additional terms.
- This Property is being sold as part of a probate, conservatorship, guardianship, or receivership. See for Probate Listing Addendum and Advisory (C.A.R. Form PLA) for additional terms.

2. **LISTING PRICE AND TERMS:**

A. The listing price shall be: \_\_\_\_\_ Dollars (\$ \_\_\_\_\_)

B. Listing Terms: \_\_\_\_\_

3. **COMPENSATION TO BROKER:**  
**Notice: The amount or rate of real estate commissions is not fixed by law. They are set by each Broker individually and may be negotiable between Seller and Broker (real estate commissions include all compensation and fees to Broker).**

A. Seller agrees to pay to Broker as compensation for services irrespective of agency relationship(s), either  \_\_\_\_\_ percent of the listing price (or if a purchase agreement is entered into, of the purchase price), or  \$ \_\_\_\_\_, AND \_\_\_\_\_, as follows:

- (1) If during the Listing Period, or any extension, Broker, cooperating broker, Seller or any other person procures a ready, willing, and able buyer(s) whose offer to purchase the Property on any price and terms is accepted by Seller, provided the Buyer completes the transaction or is prevented from doing so by Seller. (Broker is entitled to compensation whether any escrow resulting from such offer closes during or after the expiration of the Listing Period, or any extension.)
  - OR (2) If within \_\_\_\_\_ calendar days (a) after the end of the Listing Period or any extension; or (b) after any cancellation of this Agreement, unless otherwise agreed, Seller enters into a contract to sell, convey, lease or otherwise transfer the Property to anyone ("Prospective Buyer") or that person's related entity: (i) who physically entered and was shown the Property during the Listing Period or any extension by Broker or a cooperating broker; or (ii) for whom Broker or any cooperating broker submitted to Seller a signed, written offer to acquire, lease, exchange or obtain an option on the Property. Seller, however, shall have no obligation to Broker under **paragraph 3A(2)** unless, not later than the end of the Listing Period or any extension or cancellation, Broker has given Seller a written notice of the names of such Prospective Buyers.
  - OR (3) If, without Broker's prior written consent, the Property is withdrawn from sale, conveyed, leased, rented, otherwise transferred, or made unmarketable by a voluntary act of Seller during the Listing Period, or any extension.
- B. If completion of the sale is prevented by a party to the transaction other than Seller, then compensation which otherwise would have been earned under **paragraph 3A** shall be payable only if and when Seller collects damages by suit, arbitration, settlement or otherwise, and then in an amount equal to the lesser of one-half of the damages recovered or the above compensation, after first deducting title and escrow expenses and the expenses of collection, if any.

C. In addition, Seller agrees to pay Broker: \_\_\_\_\_

D. Seller has been advised of Broker's policy regarding cooperation with, and the amount of compensation offered to, other brokers.

(1) Broker is authorized to cooperate with and compensate brokers participating through the multiple listing service(s) ("MLS") by offering to MLS brokers out of Broker's compensation specified in **paragraph 3A**, either  \_\_\_\_\_ percent of the purchase price, or  \$ \_\_\_\_\_.

(2) Broker is authorized to cooperate with and compensate brokers operating outside the MLS as per Broker's policy.

Commissions are negotiable

Listing broker compensation language

Cooperating (buyer-side) broker compensation language

Out of listing broker compensation

MLS advantage language

Seller "net sheet" discussion

5. **MULTIPLE LISTING SERVICE:**

- A. **WHAT IS AN MLS?** The MLS is a database of properties for sale that is available and disseminated to and accessible by all other real estate agents who are participants or subscribers to the MLS. As set forth in **paragraph 7**, participants and subscribers conducting public marketing of a property listing must submit the property information to the MLS. Property information submitted to the MLS describes the price, terms and conditions under which the Seller's property is offered for sale (including but not limited to the listing broker's offer of compensation to other brokers). It is likely that a significant number of real estate practitioners in any given area are participants or subscribers to the MLS. The MLS may also be part of a reciprocal agreement to which other multiple listing services belong. Real estate agents belonging to other multiple listing services that have reciprocal agreements with the MLS also have access to the information submitted to the MLS. The MLS may further transmit listing information to Internet sites that post property listings online.
- B. **WHAT INFORMATION IS PROVIDED TO THE MLS:** All terms of the transaction, including sales price and financing, if applicable, (i) will be provided to the MLS in which the Property is listed for publication, dissemination and use by persons and entities on terms approved by the MLS, and (ii) may be provided to the MLS even if the Property was not listed with the MLS. Seller consents to Broker providing a copy of this listing agreement to the MLS if required by the MLS.
- C. **WHAT IS BROKER'S MLS?** Broker is a participant/subscriber to \_\_\_\_\_ Multiple Listing Service (MLS) and possibly others. That MLS is (or if checked  is not) the primary MLS for the geographic area of the Property. When required by **paragraph 7** or by the MLS, Property will be listed with the MLS(s) specified above.

6. **BENEFITS OF USING THE MLS; IMPACT OF OPTING OUT OF THE MLS;**

- A. **EXPOSURE TO BUYERS THROUGH MLS:** Listing property with an MLS exposes a seller's property to all real estate agents and brokers (and their potential buyer clients) who are participants or subscribers to the MLS or a reciprocating MLS. The MLS may further transmit the MLS database to Internet sites that post property listings online.
- B. **IMPACT OF OPTING OUT OF MLS:** If Seller elects to exclude the Property from the MLS, Seller understands and acknowledges that: (i) Seller is authorizing limited exposure of the Property and NO marketing or advertising of the Property to the public will occur; (ii) real estate agents and brokers from other real estate offices, and their buyer clients, who have access to that MLS may not be aware that Seller's Property is offered for sale; (iii) Information about Seller's Property will not be transmitted from the MLS to various real estate Internet sites that are used by the public to search for property listings and; (iv) real estate agents, brokers and members of the public may be unaware of the terms and conditions under which Seller is marketing the Property.
- C. **REDUCTION IN EXPOSURE:** Any reduction in exposure of the Property may lower the number of offers and negatively impact the sales price.
- D. **NOT LISTING PROPERTY IN A LOCAL MLS:** If the Property is listed in an MLS which does not cover the geographic area where the Property is located then real estate agents and brokers working that territory, and Buyers they represent looking for property in the neighborhood, may not be aware the Property is for sale.

Seller's Initials \_\_\_\_\_ / \_\_\_\_\_

Broker's/Agent's Initials \_\_\_\_\_ / \_\_\_\_\_

MLS language





# ESTIMATED SELLER PROCEEDS

(C.A.R. Form ESP, Revised 6/23)

SELLER: \_\_\_\_\_ DATE: \_\_\_\_\_

PROPERTY ADDRESS: 0000 Street St. , ,

This estimate is based on costs associated with \_\_\_\_\_ type of financing.

PROJECTED CLOSING DATE: \_\_\_\_\_ PROPOSED SALE PRICE: \$ \_\_\_\_\_

Current Annual Property Taxes: \$ \_\_\_\_\_ Rate: \_\_\_\_\_ % Monthly Homeowners Dues, if any: \$ \_\_\_\_\_

### CHARGES BY EXISTING LIEN HOLDERS

Interest to payoff date (first loan)	# Days	\$	_____
Interest (secondary financing)	# Days	\$	_____
Interest on lines of credit or other financing		\$	_____
Prepayment penalty		\$	_____
Demand and Reconveyance fees		\$	_____
Other lender fees (wire transfers, courier, etc.)		\$	_____

### ESCROW AND TITLE CHARGES

Escrow Fee <input type="checkbox"/> including any Exchange Fees	\$	_____
Title Insurance Policy	\$	_____
Drawing, Notary and Recording Fees	\$	_____

### OTHER EXPENSES & PRORATIONS

Brokerage Fee -To Seller's Agent <input type="checkbox"/> \$ _____ or <input type="checkbox"/> %	\$	_____
-To Buyer's Agent <input type="checkbox"/> \$ _____ or <input type="checkbox"/> %	\$	_____
Transfer Tax -County Rate per \$1,000	\$	_____
-City Rate per \$1,000	\$	_____
Property Taxes	# Days	\$ _____
Homeowners Dues	# Days	\$ _____
Buyer's Closing Costs		\$ _____
Natural Hazard Disclosure and/or other Reports		\$ _____
Wood Destroying Pest and/or other Inspection Fees		\$ _____
Corrective Work and/or other Repairs		\$ _____
Home Warranty Program		\$ _____
Rents and Security Deposits		\$ _____
VA/FHA Discount Points and Fees		\$ _____
HOA Transfer and/or Move-Out Fees		\$ _____
Other _____		\$ _____
<b>TOTAL ESTIMATED EXPENSES</b>	<b>\$</b>	<b>_____</b>

### ENCUMBRANCES (EXISTING LIENS)

First Loan	Rate: _____ %	\$ _____
Secondary Financing	Rate: _____ %	\$ _____
Secured Lines of Credit		\$ _____
Bonds, Liens, etc.		\$ _____
Other _____		\$ _____
<b>TOTAL ENCUMBRANCES</b>		<b>\$ _____</b>
<b>GROSS EQUITY</b>		<b>\$ _____</b>
(Expected sale price less encumbrances)		

### ESTIMATED CREDITS

Prorated Property Taxes	# Days	\$ _____
Prorated Homeowners Dues	# Days	\$ _____
Other _____		\$ _____
Other _____		\$ _____
<b>TOTAL ESTIMATED CREDITS</b>		<b>\$ _____</b>

### PROCEEDS RECAP

Expected Sale Price	\$	_____
LESS Total Encumbrances	-	_____
LESS Total Estimated Expenses	-	_____
PLUS Total Estimated Credits	+	_____
<b>ESTIMATED TOTAL SELLER PROCEEDS</b>	<b>\$</b>	<b>_____</b>
LESS any Note Carried by Seller	-	_____
LESS any Federal/State Withholding	-	_____
<b>ESTIMATED SELLER CASH PROCEEDS</b>	<b>\$</b>	<b>_____</b>

**Seller "net sheet" discussion**

Seller side compensation

Buyer side compensation

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# USING STANDARD FORMS TO MINIMIZE LEGAL RISKS

## Buyer Representation and Broker Compensation Agreement

# WHY USE A BUYER REPRESENTATION AGREEMENT

- You have been taken advantage of by a buyer who then wrote an offer through another agent
- Having a buyer representation agreement is a weighted factor in a procuring cause dispute
  - See, <https://www.car.org/riskmanagement/miscellaneous-contacts/realegal-chart/Recent-Changes-to-the-CAR-Procuring-Cause-Guidelines>
  - See, <https://www.car.org/riskmanagement/qa/commissions-folder/procuring-cause> (factors 19-22)
- You want buyers to feel you are committed to them and them to you
- Listing brokers offers of compensation may not value your services the same way you do
- Professional relationships in other fields are documented
- You want to avoid being named in a claim regarding non-disclosure of compensation
- You want to be prepared in the event there is a legal change regarding the MLS mandatory offer of compensation
- You believe buyers should be aware of everything you do for them
- **Engage buyer in a discussion**





### BUYER REPRESENTATION AND BROKER COMPENSATION AGREEMENT (C.A.R. Form BRBC, 12/22)

1. REPRESENTATION PERIOD AND RIGHT TO REPRESENT: \_\_\_\_\_ ("Buyer") grants \_\_\_\_\_ ("Broker")

beginning on \_\_\_\_\_ (date) and ending (i) \_\_\_\_\_ days later at 11:59 P.M., or (ii) upon completion of a resulting transaction, whichever occurs first ("Representation Period"), the non-exclusive right (unless paragraph 4B(2) is checked) to represent Buyer in acquiring real property or a manufactured home.

2. NO PRE-EXISTING BUYER REPRESENTATION AND COMPENSATION AGREEMENTS: Buyer acknowledges that Buyer has not entered into a representation agreement with another broker and has no obligation to pay compensation to any other broker, arising out of the acquisition of the Property identified in paragraph 3, except (identify other brokers and properties): \_\_\_\_\_

3. PROPERTY TO BE ACQUIRED ("Property"):

A. Location: \_\_\_\_\_  
 City(ies) of \_\_\_\_\_,  County(ies) of \_\_\_\_\_  
 Price range: \$ \_\_\_\_\_ to \$ \_\_\_\_\_  
 Other: \_\_\_\_\_

OR B.  The following specified properties only: \_\_\_\_\_

OR C.  The properties identified on the attached list.

4. COMPENSATION TO BROKER:  
NOTICE: The amount or rate of real estate commissions is not fixed by law. They are set by each Broker individually and may be negotiable between Buyer and Broker (real estate commissions include all compensation and fees to Broker).

A. BUYER AGREES TO PAY TO BROKER AS FOLLOWS: ((1) applies unless (2) or (3) is checked. Do not check both.)  
 (1) \_\_\_\_\_ percent of the acquisition price AND \$ \_\_\_\_\_,  
 OR  (2) \$ \_\_\_\_\_,  
 OR  (3) Pursuant to the compensation schedule attached.

B. BROKER RIGHT TO COMPENSATION: Broker shall be entitled to compensation specified in paragraph 4A from Buyer if during the Representation Period, or any extension thereof, Buyer enters into an agreement to purchase, lease, or otherwise acquire any Property described in paragraph 3, and the seller thereof completes the transaction or is prevented from doing so by default of Buyer as follows:

(1) **BROKER INVOLVEMENT (NON-EXCLUSIVE REPRESENTATION):** Compensation is payable only if there was Broker Involvement with the Property. "Broker Involvement" means any of the following: (i) Buyer physically entered and was shown the Property by Broker, (ii) Broker showed the Property to Buyer virtually, (iii) Broker submitted to seller a signed, written offer from Buyer to acquire, lease, exchange or obtain an option on the Property; or (iv) the Property was introduced to Buyer by Broker or one for which Broker acted on Buyer's behalf. However, merely sending Buyer a list of properties shall not be deemed Broker Involvement without documented action on the part of Broker analyzing the Property for Buyer, specifically, or assisting Buyer in the potential acquisition of the Property, or communicating with seller or seller's agent regarding Buyer's potential acquisition of the Property.

OR  (2) **BUYER ACQUISITION (EXCLUSIVE REPRESENTATION):** This Agreement shall be exclusive and irrevocable. Broker will devote time and resources to assist Buyer in finding and acquiring the Property in the expectation of being paid for Broker's services. **Broker is entitled to compensation if Buyer acquires Property during the Representation Period with or without Broker Involvement, even if another broker is also entitled to be paid for representing Buyer.**

(3) Buyer includes any person or entity, other than Broker, related to Buyer or who in any manner acts on Buyer's behalf to acquire property described in paragraph 3.

- Blank forms unenforceable
- Length is number of days, NOT an ending date
- Property description just like Goldilocks – not too broad and not too narrow
- If you want to have the right to be paid MUST complete 4A!
- Non-exclusive default. Broker only gets paid if Broker involved.



acquire property described in paragraph 4C.

**C. CANCELLATION OF BUYER REPRESENTATION AGREEMENT:**

- (1) Either Buyer or Broker may cancel this Agreement by giving written notice to the other. This Agreement shall be terminated: (i) If paragraph 4B(1) applies, upon receipt of the notice or  \_\_\_\_\_ days after receipt; or (ii) If paragraph 4B(2) applies, 30 days after receipt of the notice. Broker shall nonetheless be entitled to compensation if, during the Representation Period or any time specified in paragraph 4E, Buyer acquires Property for which there was Broker Involvement (C.A.R. Form NBIP paragraph 4B(1)) provided Broker delivers to Buyer a written list of those properties for which there was Broker Involvement. The written list of Broker Involvement properties shall be delivered to Buyer within 5 calendar days after the effective date of the cancellation. Before, during and after the 5-day period, Buyer is advised to notify any other broker of Broker's rights under this paragraph.
- (2) (If checked AND only if paragraph 4B(2) applies) Neither party shall have the right to cancel this Agreement prior to expiration, except by mutual agreement.

**D. ACCOUNTING FOR PAYMENTS TO BROKER BY OTHERS:**

- (1) If anyone other than Buyer compensates Broker for services covered by this Agreement, that amount shall be credited toward Buyer's obligation to pay compensation.
- (2) If third-party payments received exceed Buyer's obligation, the excess amount shall be paid to Broker, or  credited to Buyer, or  other \_\_\_\_\_.
- (3) **AUTHORIZATION TO INCLUDE COMMISSION IN OFFER:** Buyer authorizes ( does not authorize) Broker to include a term in Buyer's offer obligating Seller to pay Broker directly or through escrow, for any compensation that Buyer owes Broker.

- E. ADDITIONAL BROKER RIGHT TO COMPENSATION:** Broker shall be entitled to the compensation provided for in paragraph 4A if, within \_\_\_\_\_ calendar days after expiration of the Representation Period or any extension thereof or, if there is a cancellation, after the effective date of the cancellation in paragraph 4C, Buyer enters into an agreement to acquire Property for which there was Broker Involvement provided, prior to expiration of this Agreement or any extension thereof or, if there is a cancellation, within the time specified in paragraph 4C, Broker delivers Buyer a written notice of those properties which there was Broker Involvement (C.A.R. Form NBIP).

- Cancellation defaults
- Buyer gets credit for 3<sup>rd</sup> party payments D(1)
- Use D(2) as part of sales pitch if you credit back to buyer
- D(3) Buyer can ask seller to pay (SPBB)
- No protection period if 4E field is left blank

11. OTHER TERMS: \_\_\_\_\_

12. **ENTIRE AGREEMENT.** All understanding between the parties are incorporated in this Agreement. Its terms are intended by the parties as a final, complete and exclusive expression of their agreement with respect to its subject matter, and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. This Agreement may not be extended, amended, modified, altered or changed, except in writing signed by Buyer and Broker. In the event that any provision of this Agreement is held to be ineffective or invalid, the remaining provisions will nevertheless be given full force and effect. This Agreement and any supplement, addendum or modification, including any photocopy, facsimile, or electronic, may be executed in counterparts.

Buyer acknowledges that Buyer has read, understands, received a copy of and agrees to the terms of this Agreement.

**ENTITY BUYERS:** (Note: If this paragraph is completed, a Representative Capacity Signature Disclosure (C.A.R. Form RCSD) is not required for the Legally Authorized Signers designated below.)

- (1) One or more Buyers is a trust, corporation, LLC, probate estate, partnership, holding a power of attorney or other entity.
- (2) This Agreement is being Signed by a Legally Authorized Signer in a representative capacity and not for him/herself as an individual. The Legally Authorized Signer (i) represents that the entity for which that person is acting already exists and is in good standing to do business in California and (ii) shall Deliver to Broker, within **3 Days** of signing, evidence of authority to act in that capacity.
- (3) The name(s) of the Legally Authorized Signer(s) is: \_\_\_\_\_
- (4) If a trust, Buyer may be identified as trustee(s) of the trust or by simplified trust name (ex. John Doe, co-trustee, Jane Doe, co-trustee or Doe Revocable Family Trust).
- (5) If the entity is a trust or under probate, the following is the full name of the trust or probate case, including case #: \_\_\_\_\_

**BUYER SIGNATURE(S):**

(Signature) By, \_\_\_\_\_ Date: \_\_\_\_\_  
Printed name of Buyer: \_\_\_\_\_  
 Printed Name of Legally Authorized Signer: \_\_\_\_\_ Title, if applicable, \_\_\_\_\_  
Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Email \_\_\_\_\_ Phone \_\_\_\_\_

(Signature) By, \_\_\_\_\_ Date: \_\_\_\_\_  
Printed name of Buyer: \_\_\_\_\_  
 Printed Name of Legally Authorized Signer: \_\_\_\_\_ Title, if applicable, \_\_\_\_\_  
Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Email \_\_\_\_\_ Phone \_\_\_\_\_

Additional Signature Addendum attached (C.A.R. Form ASA)

**BROKER SIGNATURE(S):**

Real Estate Broker (Firm) \_\_\_\_\_ DRE Lic# \_\_\_\_\_  
Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
By \_\_\_\_\_ Date \_\_\_\_\_  
Tel. \_\_\_\_\_ E-mail \_\_\_\_\_ DRE Lic# \_\_\_\_\_  
By \_\_\_\_\_ Date \_\_\_\_\_  
Tel. \_\_\_\_\_ E-mail \_\_\_\_\_ DRE Lic# \_\_\_\_\_

Two Brokers with different companies are representing the Buyer. Co-Buyer Brokers information is on the attached Additional Broker Acknowledgement (C.A.R. Form ABA)

• **Company terms?**  
• **Don't forget to have everyone sign!**



**SELLER PAYMENT TO BUYER'S BROKER**  
(C.A.R. Form SPBB, 6/23)

The following terms and conditions are hereby incorporated in and made a part of the Purchase Agreement, OR  Other Agreement on property known as \_\_\_\_\_, dated \_\_\_\_\_, ("Property") in which \_\_\_\_\_ is referred to as ("Buyer"), and \_\_\_\_\_ is referred to as ("Seller").

**INSTRUCTIONS:**

- Only use this form if:
  - (i) Buyer and Buyer's Agent have **ALREADY ENTERED INTO A BUYER REPRESENTATION AGREEMENT** (C.A.R. Form BRBC);
  - AND (ii) Buyer has an obligation to pay Buyer's Broker compensation pursuant to the representation agreement after first deducting any amount that Buyer's Broker will be receiving from Seller's broker through the MLS or other agreement (C.A.R. Form CBC);
  - AND (iii) Buyer is asking Seller to pay Buyer's Broker all or a portion of the balance due Buyer's Broker under the representation agreement. This amount shall be entered into paragraph 3.
- Seller may accept, reject or counter this term, as with any other term in Buyer's offer.

Notice: The amount or rate of real estate commissions is not fixed by law. They are set by each Broker individually and may be negotiable between Seller and Broker (real estate commissions include all compensation and fees to Broker).

- BUYER REPRESENTATION AGREEMENT WITH COMPENSATION:** Buyer has entered into a written agreement to compensate Buyer's Broker \_\_\_\_\_% of the purchase price OR, if checked  \$ \_\_\_\_\_ for purchase of the Property.
- COMPENSATION FROM SELLER'S BROKER TO BUYER'S BROKER:** As of the date this Seller Payment for Buyer's Broker document is signed by Buyer, and pursuant to the MLS (or  \_\_\_\_\_), Seller's Broker has agreed to pay Buyer's Broker \_\_\_\_\_% of the purchase price OR, if checked  \$ \_\_\_\_\_ upon completion of the transaction.
- SELLER PAYMENT TO BUYER'S BROKER (SHALL NOT BE GREATER THAN THE AMOUNT IN PARAGRAPH 1 MINUS THE AMOUNT IN PARAGRAPH 2):** Seller agrees to pay Buyer's Broker \_\_\_\_\_% of the purchase price OR, if checked  \$ \_\_\_\_\_ (insert a percentage or an amount which is no greater than the applicable percentage or amount in paragraph 1 less the applicable percentage or amount in paragraph 2).
- Buyer authorizes escrow holder, upon request, to deliver to Seller a copy of the portion of the written agreement between Buyer and Buyer's Broker identifying the amount of compensation Buyer has agreed to pay Buyer's Broker.
- If Buyer's Broker is the same as Seller's Broker, then the amount specified in the MLS shall apply in the manner specified in paragraph 2 and 3. Additionally, if Broker has agreed in a listing agreement to a reduced amount of compensation in the event of dual agency, the amount of compensation specified in the MLS will still apply to offset the compensation that Buyer has agreed to pay Buyer's Broker.

By signing below, Buyer and Seller each acknowledge that they have read, understand, accept, and have received a Copy of this Seller Payment for Buyer's Broker.

Buyer \_\_\_\_\_ Date \_\_\_\_\_  
 Buyer \_\_\_\_\_ Date \_\_\_\_\_  
 Seller \_\_\_\_\_ Date \_\_\_\_\_  
 Seller \_\_\_\_\_ Date \_\_\_\_\_

Paragraph #	Paragraph Title or Contract Term	Terms and Conditions	Additional Terms
G(1)	5E	Seller Credit, if any, to Buyer	<input type="checkbox"/> \$ _____ (% of purchase price) (% number above is for calculation purposes and is not a contractual term) OR <input type="checkbox"/> Other: _____
G(2)	ADDITIONAL FINANCE TERMS: _____		
G(3)	18	<input type="checkbox"/> Seller agrees to pay the obligation of Buyer to compensate Buyer's Broker under a separate agreement (C.A.R. Form SPBB attached). Seller's Broker's offer, if any, to compensate Buyer's Broker is unaffacted unless Otherwise Agreed.	

- Option to add to RPA if 3G(3) checked,
- SPBB:
- Tells seller how much buyer owes
- Reminds seller how much seller's agent pays
- Asks seller to pay all or part of difference
- Do NOT use if no buyer representation agreement!
- Do NOT use if seller's agent already paying amount buyer owes
- Do NOT use if buyer agent willing to waive the difference (buyer will love that)
- Must be signed to be binding on seller



# ANTICIPATED BROKER COMPENSATION DISCLOSURE

(C.A.R. Form ABCD, 12/22)

\_\_\_\_ ("Buyer's Broker")  
is a real estate licensee providing services to \_\_\_\_\_ ("Buyer").  
Broker anticipates receiving compensation from Seller or Seller's Broker or  Other \_\_\_\_\_  
if Buyer purchases any property identified below.

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 \_\_\_\_\_

### 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

### 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.)

- **Section 1. Broker expects to be paid (full disclosure)**
- **Section 2. Amount broker anticipates being paid. Can use MLS print out instead. Full transparency per property.**
- **How much broker actual did get paid. Might be in escrow closing document**



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# RESOURCES AND STANDARD FORMS RESPONSE

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# C.A.R. RESOURCES

- <https://www.smartzonecar.org/buyers-agent-resources>  
(Legal Q&A and Quick Guide, Webinars, Education, You Tube video)
- <https://www.smartzonecar.org/what-realtors-do> (184 Things REALTORS® Do)
- <https://www.car.org/riskmanagement/miscellaneous-contacts/realegal-chart/Recent-Changes-to-the-CAR-Procuring-Cause-Guidelines>
- <https://www.car.org/riskmanagement/qa/commissions-folder/procuring-cause> (factors 19-22)
- [carforms@car.org](mailto:carforms@car.org)
  - Standard Forms Advisory Committee evaluating language
  - Suggestions can be made to [carforms@car.org](mailto:carforms@car.org)

