

Unrepresented Buyers and Listing Brokers: Part 2

What is an unrepresented buyer? A purchaser who acts without any real estate representation, either from the listing broker (which could be the agent who took the listing or another agent in the listing brokerage firm) or another brokerage company.

May a listing broker provide a purchase offer form to an unrepresented buyer. Yes. The C.A.R. terms of use allow a broker to provide forms to any party in a transaction for which the broker is acting as an agent. The listing broker who does so should first get the permission of the seller. To reduce the risk of creating an agency relationship with the buyer, the listing broker should not fill in any substantive terms or blank fields of the offer but instead should only include the property address and buyer's name on the form. The broker can also name the listing brokerage as the seller's only agent in the agency confirmation paragraph.

If a listing broker gives an unrepresented buyer a blank offer, what else should the broker do or not do? The broker should provide that buyer with a Buyer Non-Agency Agreement (C.A.R. Form BNA). The broker should not discuss terms with or help the unrepresented buyer complete the offer. In all further communications with the unrepresented buyer, the broker should remind the buyer that the broker is acting in the capacity as the seller's broker only and should refer the buyer to the previously provided BNA form.

How should a seller respond to an offer written by an unrepresented buyer? The offer should be evaluated on its own merits by considering the offer's terms and presentation. A relevant factor could include the fact that the buyer is unrepresented. The seller could decide to: (i) not respond at all; (ii) reject the buyer's offer; (iii) accept the buyer's offer; or (iv) issue a counter to the buyer's offer. If the buyer's offer is poorly written or does not contain terms approved by the seller, it may be best in the counter offer to reject the buyer's offer in its entirety and refer to and include with the counter offer a new purchase offer prepared by the listing broker on behalf of the seller with terms acceptable to the seller.

If the listing agent, or another agent in the same brokerage company as the listing agent, prepares an offer for the buyer, will that buyer be represented by the brokerage company? If the agent for the brokerage company had previously obtained the buyer's signature on a buyer representation agreement (C.A.R. Form BRBC or PSRA) then that buyer is represented, and the brokerage company will be a dual agent. If the buyer has not signed a buyer representation agreement, either previously or prior to or concurrently with signing the offer, then an agency, if any, will be determined by the circumstances. If the agent preparing the offer merely provides the buyer with a blank form, and also provides the buyer with a Buyer Non-Agency Agreement, and the agency confirmation paragraph in the offer identifies the listing brokerage as the seller's only agent, then agency should be avoided, and the buyer will be unrepresented. However, if the agent preparing the offer discusses terms with the buyer, and assists the buyer in completing the offer, then a buyer could believe the agent was acting on the buyer's behalf and the agent could be deemed to represent the buyer. The listing brokerage company will then be considered a dual agent in the transaction. When the agent fails to obtain the buyer's signature on a buyer representation agreement, the broker (and specific licensee) will **not** be entitled to compensation from the buyer for the services rendered. The brokerage will be a gratuitous agent, with the same responsibilities and liability to the buyer as a paid agent, without the benefit of compensation. The brokerage company will also not be entitled to additional compensation from the seller for having an unrepresented buyer.