

GET READY FOR AUGUST 17: WHAT YOU NEED TO KNOW ABOUT THE BRBC

July 25, 2024

On August 17, 2024, or earlier depending on your MLS, the practice changes required by the NAR settlement will go into effect. One of those practice changes is that all MLS participants working with a buyer must enter into a written agreement before the buyer tours any home. C.A.R.'s Buyer Representation and Broker Compensation Agreement (C.A.R. Form BRBC) can help you meet this requirement. Keep reading to learn about the BRBC!

1. Are buyer representation agreements required?

Not currently, but they will be required beginning August 17, 2024, or earlier depending on your MLS, when all MLS participants who are "working with a buyer" must enter into a written agreement with the buyer before the buyer tours any home. This is required by the terms of the NAR settlement.

2. What requirements must be met for a broker to earn the stated compensation under the BRBC?

The buyer must enter into an agreement to acquire the type of property described in the BRBC during the BRBC's specified representation period, or any extension thereof (and before the effective date of any cancellation, if applicable). If the buyer and buyer's agent have chosen non-exclusive buyer representation, there must also be "broker involvement," which is discussed below in Question #6. If the foregoing requirements are met, compensation will be due even if the transaction closes after the representation period expires or the BRBC is canceled.

3. Where do I enter the amount of compensation that the buyer is to pay the buyer's broker?

The compensation amount to buyer's broker is stated under paragraph 2E(1) of the BRBC. This amount is also restated in paragraph 16 of the BRBC, entitled "Confirmation of Compensation." ZipForms will auto-populate the same commission amount stated in paragraph 2E(1) in this Confirmation of Compensation paragraph. When using other platforms, the agent should check that the same amount of compensation is indicated to avoid conflicting terms regarding their right to compensation.

4. Under the BRBC, a buyer and broker can enter into an exclusive or non-exclusive relationship. What is the difference?

There are two main differences. First, under a non-exclusive agreement (which the BRBC defaults to), a prerequisite to the broker earning compensation is that there must be "broker involvement" (discussed in Question #6) with the property. On the other hand, under an exclusive agreement, the broker has the right to compensation even if the buyer acts alone or with a different broker in buying a property during the representation period.

Second, unilateral cancellation under a non-exclusive agreement is effective immediately upon receipt of the cancellation notice (unless otherwise agreed in the BRBC), while unilateral cancellation under an exclusive agreement is not effective until 30 days after receipt of the notice.

5. How do I make the BRBC an exclusive agreement?

The box in paragraph 2A(2) must be checked, but additionally, the buyer must initial the Exclusive Representation box (paragraph 15 of the BRBC).

6. What does “broker involvement” mean under the BRBC?

“Broker involvement” means any of the following:

- The buyer physically entered and was shown the property by the broker;
- The broker showed the property to the buyer virtually (e.g., via a videoconference or walk through);
- The broker submitted to the seller a signed, written offer from the buyer to acquire, lease, exchange, or obtain an option on the property;
- The broker performed a market analysis related to the property or reviewed property-specific documents or disclosures with the buyer; or
- The property was introduced to the buyer by the broker, or the property was one for which the broker acted on the buyer’s behalf.

Note that merely sending the buyer a list of properties is not deemed “broker involvement” without documented action on the part of the broker, for example: analyzing the property for the buyer specifically, assisting the buyer in the potential acquisition of the property, or communicating with the seller or seller’s agent about the buyer’s potential acquisition of the property.

7. Must the Buyer Identification of Preferences and Priorities (C.A.R. Form BIPP) be attached to the BRBC?

No. The agreement is effective without it. But it will serve the important purpose of providing details as to the type of property the buyer is looking to buy. It is separate from the main body of the BRBC in order to account for the fact that buyer preferences will often change as their property search goes on. A new BIPP is intended to replace and supersede any previous one.

8. When should the Buyer Material Issues for a Specific Property (C.A.R. Form BMI-SP) be used?

As the name states, this form is specific to a particular property. It can be provided to the buyer once the buyer is contemplating an offer on a particular property, or is even already in contract to purchase. The idea is that the buyer will point the agent to their specific concerns which will allow the agent to address those concerns directly.

9. Who can cancel the BRBC, and how?

Either the buyer or broker may unilaterally cancel the agreement by giving notice to the other, or it may be canceled by mutual agreement. No reason needs to be given for the cancellation. The Cancellation of Buyer Representation Agreement (C.A.R. Form COBR) may be used to provide notice.

If the agreement is non-exclusive, a unilateral cancellation is effective immediately upon receipt of notice (unless otherwise agreed in the BRBC). On the other hand, unilateral cancellation under an exclusive agreement is not effective until 30 days after receipt of notice. However,

10. Am I entitled to compensation if, after notice of cancellation of the BRBC, the buyer enters into a contract to purchase property for which there was "broker involvement" prior to the effective date of cancellation?

It depends. Under the BRBC, yes, if the broker provides the buyer with a written list of those properties for which there was "broker involvement," which must be delivered to the buyer within 5 calendar days after the effective date of cancellation. The Notice of Broker Involved Properties (C.A.R. Form NBIP) can be used for this purpose. But the answer is no if the broker does not deliver the list on time or if the property acquired was not on the list.

11. Am I entitled to compensation if, after the end of the BRBC representation period, the buyer enters into a contract to purchase the property described in the BRBC for which there was "broker involvement?"

Possibly. First, the parties must have agreed on a "continuation period." This is an optional term under 2E(3) which must be filled in if the broker is to benefit by it. Second, prior to the expiration of the BRBC or any extension thereof, the broker must deliver to the buyer a written notice of those properties for which there was broker involvement. Once again, the NBIP can be used for this purpose.

12. My buyer is refusing to sign the BRBC. Is there a simpler version of the BRBC?

Yes. There is the Property Showing and Representation Agreement (C.A.R. Form PSRA). It has many of the features of the BRBC, but is much shorter and simpler. The main differences between the PSRA and the BRBC are:

- The PSRA cannot last longer than 30 days
- It can only be non-exclusive
- It has space for identifying only three properties
- It may be cancelled at any time

13. How can I get paid once the MLS no longer permits offers of compensation?

There are several ways to get paid, and in any transaction more than one way may be applicable. For example:

METHOD	C.A.R. FORM(S) TO USE
The buyer pays the compensation through a buyer representation agreement.	BRBC or PSRA

The buyer negotiates for the seller to pay the compensation that the buyer owes the buyer's broker pursuant to the buyer representation agreement.	Use paragraph 3G(3) in the Residential Purchase Agreement (C.A.R. Form RPA), and document that agreement with Seller's Payment to Buyer's Broker (C.A.R. Form SPBB)
If the seller is unrepresented, the buyer's broker can contract directly with the seller for payment.	Single Party Compensation Agreement (C.A.R. Form SP)

14. How do I ensure that I will actually receive my agreed-upon compensation?

This will be handled through escrow. In paragraph 4E of the BRBC, the buyer irrevocably assigns to the broker the compensation out of the buyer's funds in escrow. In paragraph 18A of the RPA, the buyer agrees to pay the broker as specified in their agreement, and that the amount is payable upon close of escrow. And in paragraph 19D of the RPA, escrow agrees: 1) to pay the compensation due as long as the agreement is provided to escrow, and 2) that compensation disbursement is an irrevocable assignment.

15. Is a buyer required to deliver the Buyer Financial and Personal Information form (C.A.R. Form BFPI)?

Yes. It's not optional. Every buyer should provide one. However, the timing of delivery can be changed. By default, the BFPI must be delivered within 5 days from signing the BRBC.

The BFPI requires the buyer to provide relevant personal and financial information including proof of funds needed to complete the purchase of a property and satisfy the obligation to pay the broker, and a preapproval/prequalification letter, to assure the broker of the buyer's ability to acquire property.

16. What if the buyer fails to provide this information, or if the buyer does not qualify financially to acquire the property?

Then the broker may cancel the BRBC in writing.

17. Do I need to work for a buyer who does not have the funds to pay me?

No. As stated above, if the buyer does not qualify financially, then the broker may cancel in writing.

But buyers who know they lack the funds to pay their broker should check the applicable box in paragraph 2G(2) of the BRBC. There are two boxes, one indicating that the buyer does not have sufficient funds to pay the broker and a second box indicating that the buyer intends to obtain a loan that does not allow the buyer to pay compensation to their own broker.

If either box is checked, the broker is given permission to seek compensation from the seller as stated in paragraph 9B(2) of the BRBC and use paragraph 3G(3) of the RPA to ask the seller to pay. If the buyer's broker is not able to arrange for full compensation through the seller or other sources, the broker may withdraw from the transaction.

In that case, even though the buyer's broker would not be entitled to compensation if the buyer completes that purchase, the broker should be relieved of any potential liability if the buyer pursues the transaction because the broker would no longer represent the buyer on the potential purchase. The BRBC would still be valid however if the buyer pursues other properties that fit the parameters of the BRBC. If the buyer's broker intends to withdraw from the transaction, the broker should do so in writing provided to the buyer, the seller and the seller's broker as soon as possible, and preferably before the buyer enters into a binding contract with the seller.

18. Does the BRBC need to be approved by an agent's broker or office manager to be binding on the broker?

No, but much like a listing agreement, the broker or manager has five days to cancel the BRBC if they do not approve of the terms. Individual agents or broker-associates should provide their brokerage with a copy of the BRBC as soon as possible once obtaining the buyer's signature.

19. Are there any limits to how long a representation period can be under the BRBC?

Yes. The maximum representation period allowed under the BRBC is 3 months, unless the buyer is a corporation, limited liability company, or partnership. However, the representation period may be extended for an additional 3-month period (or less) by using a modification agreement, such as C.A.R.'s Modification of Terms – Buyer Representation Agreement (C.A.R. Form MT-BR). Subsequent extensions are also permitted.

For more information about the upcoming practice changes and broker compliance, please visit <https://www.car.org/riskmanagement/brokercompliance>.