

Real Estate Legal Update California Community Colleges Real Estate Education Center Conference October 21, 2022

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Recent Legislation

Fair Housing

Appraisal

Miscellaneous

Recent Litigation

Premises liability

Real Estate Brokers

> Compensation

> Duty to non-client

Short term rentals

COVID Insurance Coverage

Questions and Answers

RECENT LEGISLATION

New Law Effective 7/1/22

- Disclosure and Removal of Discriminatory Covenants, Assembly Bill 1466 (2021); Gov't. Code §§ 12956.1, 12956.2, 27282, 27388.1, 12956.3 and 27388.2.
- Beginning July 1, 2022, if a real estate broker or agent (or county recorder, title company, or escrow company) has actual knowledge that a declaration, governing document, or deed that is being directly delivered to a person who holds or is acquiring an ownership interest in property includes a possible unlawfully restrictive covenant, they shall notify the person who holds or is acquiring the ownership interest in the property of the existence of that covenant and their ability to have it removed through the restrictive covenant modification process. However, there is no presumption that a party providing a document has read the document or has actual knowledge of its content.
- 2. Beginning July 1, 2022, upon request before the close of escrow, AB 1466 requires the title company or escrow company that is directly involved in the pending transaction to assist in the preparation of a Restrictive Covenant Modification. A new statutory form has been created to facilitate the process.
- 3. Requires the county recorder of each county to establish a “restrictive covenant program” to assist in the redaction of unlawfully discriminatory covenants.

C.A.R. Sample Letter: Disclosure to Buyer (or Owner) of Discriminatory Covenants

Date: _____

To: _____ ("Buyer")
of the property located at _____ (Street address)
(Unit #) _____ (City) _____ (State) _____ (Zip Code) _____ ("Property")

Dear Buyer:

I am writing to inform you of the existence of a possible discriminatory covenant written into the deed, declaration or other governing document associated with the above-referenced property. Be assured that discriminatory covenants based on race, religion or other protected characteristics are not enforceable and, in fact, have not been enforceable in California for more than 50 years. Presently, such discriminatory covenants are legally void. They cannot and will not affect your rights as an owner of real property.

Nonetheless, they may still appear on the deed, declaration or other governing documents, despite being legally void.

Your Right to Remove Discriminatory Covenants

You have the right and ability to have these discriminatory covenants removed through the Restrictive Covenant Modification Process. Beginning July 1, 2022, it is the legal obligation of a title company or escrow company directly involved in a pending transaction to assist you in the preparation of a Restrictive Covenant Modification form.

You Must Request this Assistance from the Title or Escrow Company Prior to Close

Even though the title or escrow company is legally required to assist you, they are only required to do so if you make the request for their assistance *prior to close of escrow*. If you do, they will help you prepare the statutory Restrictive Covenant Modification form.

After the form is prepared, it will then be submitted to the local County Counsel to verify that the deed or other governing document does in fact contain an unlawful discriminatory covenant. Once it is verified, the modification form will be officially recorded. However, it is possible that the County Counsel will disagree that the original document contains an unlawful discriminatory covenant and refuse to record the modification form. The County Counsel is legally obliged to take no more than three months to make this determination.

Sincerely,

[Signature of agent]

[Type or print name of agent]

New Law Effective 1/1/23

- Implicit Bias Training, Senate Bill 263 (2021); B&P Code §§10151, 10153.2, and 10170.5.
- The course requirements for an applicant for a real estate broker or salesperson license must contain a component on implicit bias, including education regarding the impact of implicit bias, explicit bias, and systemic bias on consumers, the historical and social impacts of those biases, and actionable steps students can take to recognize and address their own implicit biases.
- Also required for that applicant is a course on legal aspects of real estate which must contain a component on state and federal fair housing laws. As part of this course there must be an interactive participatory component during which the applicant shall role play as both a consumer and real estate professional.
- For license renewals a two-hour implicit bias training course is added to existing requirements. Also, the fair housing course requirement for initial license renewals must include an interactive participatory component.



C.A.R. Form

Fair Housing and Discrimination Advisory (C.A.R. Form FHDA) Originally released in 2021

- EQUAL ACCESS TO HOUSING FOR ALL:** All housing in California is available to all persons. Discrimination as noted below is prohibited by law. Resources are available for those who have experienced unequal treatment under the law.
- FEDERAL AND STATE LAWS PROHIBIT DISCRIMINATION AGAINST IDENTIFIED PROTECTED CLASSES:**
 - FEDERAL FAIR HOUSING ACT ("FHA")** Title VIII of the Civil Rights Act; 42 U.S.C. §§ 3601-3619; Prohibits discrimination in sales, rental or financing of residential housing against persons in protected classes;
 - CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT ("FEHA")** California Government Code ("GC") §§ 12900-12996, 12955; 2 California Code of Regulations ("CCR") §§ 12005-12271; Prohibits discrimination in sales, rental or financing of housing opportunity against persons in protected classes by providers of housing accommodation and financial assistance services as related to housing;
 - CALIFORNIA UNRUH CIVIL RIGHTS ACT ("Unruh")** California Civil Code ("CC") § 51; Prohibits business establishments from discriminating against, and requires full and equal accommodation, advantages, facilities, privileges, and services to persons in protected classes;
 - AMERICANS WITH DISABILITIES ACT ("ADA")** 42 U.S.C. §§ 12181-12189; Title III of the ADA prohibits discrimination based on disability in public accommodations; and
 - OTHER FAIR HOUSING LAWS:** § 504 of Rehabilitation Act of 1973 29 U.S.C. § 794; Ralph Civil Rights Act CC § 51.7.; California Disabled Persons Act; CC §§ 54-55.32; any local city or county fair housing ordinances, as applicable.
- POTENTIAL LEGAL REMEDIES FOR UNLAWFUL DISCRIMINATION:** Violations of fair housing laws may result in monetary civil fines, injunctive relief, compensatory and/or punitive damages, and attorney fees and costs.
- PROTECTED CLASSES/CHARACTERISTICS:** Whether specified in Federal or State law or both, discrimination against persons if based on that person's belonging to, association with, or perceived membership in, certain classes or categories, such as the following, is prohibited. Other classes, categories or restrictions may also apply.

| | | | | |
|-------------------|--------------------------------|--|---|--|
| Race | Color | Ancestry | National Origin | Religion |
| Age | Sex, Sexual Orientation | Gender, Gender Identity, Gender expression | Marital Status | Familial Status (family with a child or children under 18) |
| Citizenship | Immigration Status | Primary Language | Military/Veteran Status | Source of Income (e.g., Section 8 Voucher) |
| Medical Condition | Disability (Mental & Physical) | Genetic Information | Criminal History (non-relevant convictions) | Any arbitrary characteristic |

- THE CALIFORNIA DEPARTMENT OF REAL ESTATE REQUIRES TRAINING AND SUPERVISION TO PREVENT HOUSING DISCRIMINATION BY REAL ESTATE LICENSEES:**
 - California Business & Professions Code ("B&PC") § 10170.5(a)(4) requires 3 hours of training on fair housing for DRE license renewal; Real Estate Regulation § 2725(f) requires brokers who oversee salespersons to be familiar with the requirements of federal and state laws relating to the prohibition of discrimination.
 - Violation of DRE regulations or real estate laws against housing discrimination by a real estate licensee may result in the loss or suspension of the licensee's real estate license. B&PC § 10177(l)(1); 10 CCR § 2780
- REALTOR® ORGANIZATIONS PROHIBIT DISCRIMINATION:** NAR Code of Ethics Article 10 prohibits discrimination in employment practices or in rendering real estate license services against any person because of race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity by REALTORS®.
- WHO IS REQUIRED TO COMPLY WITH FAIR HOUSING LAWS?**
Below is a non-exclusive list of providers of housing accommodations or financial assistance services as related to housing who are most likely to be encountered in a housing transaction and who must comply with fair housing laws.
 - Sellers
 - Real estate licensees
 - Mobilehome parks
 - Insurance companies
 - Landlords
 - Real estate brokerage firms
 - Homeowners Associations ("HOAs");
 - Government housing services
 - Sublessors
 - Property managers
 - Banks and Mortgage lenders
 - Appraisers
- EXAMPLES OF CONDUCT THAT MAY NOT BE MOTIVATED BY DISCRIMINATORY INTENT BUT COULD HAVE A DISCRIMINATORY EFFECT:**
 - Prior to acceptance of an offer, asking for or offering buyer personal information or letters from the buyer, especially with photos. Those types of documents may inadvertently reveal, or be perceived as revealing, protected status information thereby increasing the risk of (i) actual or unconscious bias, and (ii) potential legal claims against sellers and others by prospective buyers whose offers were rejected.
 - Refusing to rent (i) an upper-level unit to an elderly tenant out of concern for the tenant's ability to navigate stairs or (ii) a house with a pool to a person with young children out of concern for the children's safety.
- EXAMPLES OF UNLAWFUL OR IMPROPER CONDUCT BASED ON A PROTECTED CLASS OR CHARACTERISTIC:**
 - Refusing to negotiate for a sale, rental or financing or otherwise make a housing opportunity unavailable; failing to present offers due to a person's protected status;
 - Refusing or failing to show, rent, sell or finance housing; "channeling" or "steering" a prospective buyer or tenant to or away from a particular area due to that person's protected status or because of the racial, religious or ethnic composition of the neighborhood;
 - "Blockbusting" or causing "panic selling" by inducing a listing, sale or rental based on the grounds of loss of value of property, increase in crime, or decline in school quality due to the entry or prospective entry of people in protected categories into the neighborhood;
 - Making any statement or advertisement that indicates any preference, limitation, or discrimination;

- Form specifies that certain discrimination is prohibited
- Identifies sources of fair housing laws
- Lists protected classes and categories
- Identifies real estate practitioners subject to the laws
- Gives examples of prohibited conduct, even if no intent
- Additional resources



C.A.R. Form

Fair Housing and Discrimination Advisory (C.A.R. Form FHDA)

Originally released in 2021

- E. Inquiring about protected characteristics (such as asking married applicants if they are married, or prospective purchasers if they have children or are planning to start a family);
- F. Using criminal history information before otherwise affirming eligibility, and without a legally sufficient justification;
- G. Failing to assess financial standards based on the portion of the income responsible by a tenant who receives government subsidies (such as basing an otherwise neutral rent to income ratio on the whole rent rather than just the part of rent that is the tenant's responsibility);
- H. Denying a home loan or homeowner's insurance;
- I. Offering inferior terms, conditions, privileges, facilities or services;
- J. Using different qualification criteria or procedures for sale or rental of housing such as income standards, application requirements, application fees, credit analyses, sale or rental approval procedures or other requirements;
- K. Harassing a person;
- L. Taking an adverse action based on protected characteristics;
- M. Refusing to permit a reasonable modification to the premises, as requested by a person with a disability (such as refusing to allow a wheelchair bound tenant to install, at their expense, a ramp over front or rear steps, or refusing to allow a physically disabled tenant from installing, at their own expense, grab bars in a shower or bathtub);
- N. Refusing to make reasonable accommodation in policies, rules, practices, or services for a person with a disability (such as the following, if an actual or prospective tenant with a disability has a service animal or support animal):
- (i) Failing to allow that person to keep the service animal or emotional support animal in rental property,
 - (ii) Charging that person higher rent or increased security deposit, or
 - (iii) Failing to show rental or sale property to that person who is accompanied by the service animal or support animal, and;
- O. Retaliating for asserting rights under fair housing laws.
- 10. EXAMPLES OF POSITIVE PRACTICES:**
- A. Real estate licensees working with buyers or tenants should apply the same objective property selection criteria, such as location/neighborhood, property features, and price range and other considerations, to all prospects.
 - B. Real estate licensees should provide complete and objective information to all clients based on the client's selection criteria.
 - C. Real estate licensees should provide the same professional courtesy in responding to inquiries, sharing of information and offers of assistance to all clients and prospects.
 - D. Housing providers should not make any statement or advertisement that directly or indirectly implies preference, limitation, or discrimination regarding any protected characteristic (such as "no children" or "English-speakers only").
 - E. Housing providers should use a selection process relying on objective information about a prospective buyer's offer or tenant's application and not seek any information that may disclose any protected characteristics (such as using a summary document, e.g. C.A.R. Form SUM-MO, to compare multiple offers on objective terms).
- 11. FAIR HOUSING RESOURCES:** If you have questions about your obligations or rights under the Fair Housing laws, or you think you have been discriminated against, you may want to contact one or more of the sources listed below to discuss what you can do about it, and whether the resource is able to assist you.
- A. Federal: https://www.hud.gov/program_offices/fair_housing_equal_opp
 - B. State: <https://www.dfeh.ca.gov/housing/>
 - C. Local: local Fair Housing Council office (non-profit, free service)
 - D. DRE: <https://www.dre.ca.gov/Consumers/FileComplaint.html>
 - E. Local Association of REALTORS®. List available at: <https://www.car.org/en/contactus/rosters/localassociationroster>.
 - F. Any qualified California fair housing attorney, or if applicable, landlord-tenant attorney.
- 12. LIMITED EXCEPTIONS TO FAIR HOUSING REQUIREMENTS:** No person should rely on any exception below without first seeking legal advice about whether the exception applies to their situation. Real estate licensees are not qualified to provide advice on the application of these exceptions.
- A. Legally compliant senior housing is exempt from FHA, FEHA and Unruh as related to age or familial status only;
 - B. An owner of a single-family residence who resides at the property with one lodger may be exempt from FEHA for rental purposes, PROVIDED no real estate licensee is involved in the rental;
 - C. An owner of a single-family residence may be exempt from FHA for sale or rental purposes, PROVIDED (i) no real estate licensee is involved in the sale or rental and (ii) no discriminatory advertising is used, and (iii) the owner owns no more than three single-family residences. Other restrictions apply;
 - D. An owner of residential property with one to four units who resides at the property, may be exempt from FHA for rental purposes, PROVIDED no real estate licensee is involved in the rental; and
 - E. Both FHA and FEHA do not apply to roommate situations. See, *Fair Housing Council v Roommate.com LLC*, 666 F.3d 1216 (2019).
 - F. Since both the 14th Amendment of the U.S. Constitution and the Civil Rights Act of 1866 prohibit discrimination based on race; the FHA and FEHA exemptions do not extend to discrimination based on race.

- Form specifies that certain discrimination is prohibited
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- Identifies real estate practitioners subject to the laws
- Gives examples of prohibited conduct, even if no intent
- Additional resources

Buyer/Tenant and Seller/Landlord have read, understand and acknowledge receipt of a copy of this Fair Housing & Discrimination Advisory.

Buyer/Tenant _____ Date _____

Buyer/Tenant _____ Date _____

Seller/Landlord _____ Date _____

Seller/Landlord _____ Date _____



New Law Effective 7/1/22

- Appraisal Discrimination Notice, Assembly Bill 948 (2021); B&P Code §§ 11340, 11360, 11310.3 and 11424; Civil Code § 1102.6g; and Government Code § 12955
- After July 1, 2022, every contract for the sale of real property shall contain, in no less than 8-point type, the following notice:
 - *“Any appraisal of the property is required to be unbiased, objective, and not influenced by improper or illegal considerations, including, but not limited to, any of the following: race, color, religion (including religious dress, grooming practices, or both), gender (including, but not limited to, pregnancy, childbirth, breastfeeding, and related conditions, and gender identity and gender expression), sexual orientation, marital status, medical condition, military or veteran status, national origin (including language use and possession of a driver’s license issued to persons unable to prove their presence in the United States is authorized under federal law), source of income, ancestry, disability (mental and physical, including, but not limited to, HIV/AIDS status, cancer diagnosis, and genetic characteristics), genetic information, or age. If a buyer or seller believes that the appraisal has been influenced by any of the above factors, the seller or buyer can report this information to the lender or mortgage broker that retained the appraiser and may also file a complaint with the Bureau of Real Estate Appraisers at <https://www2.brea.ca.gov/complaint/> or call (916) 552-9000 for further information on how to file a complaint.”*
- Creates a simple form for the filing of a complaint. The form contains a check box asking if the complainant believes that the opinion of the value of the real estate is below market and requesting information identifying the protected status of the complainant.
- Prohibits an appraiser from basing their appraisal of the market value of a property on the basis of race, color, religion, gender, gender expression, age, national origin, disability, marital status, source of income, sexual orientation, familial status, employment status, or military status of either the present or prospective owners or occupants of the subject property, or of the present owners or occupants of the properties in the vicinity of the subject property, or on any other

B. APPRAISAL:

- (1) This Agreement is, **unless otherwise specified in paragraph 3L(2) or an attached CR form**, contingent upon a written appraisal of the Property by a licensed or certified appraiser at no less than the amount specified in **paragraph 3L(2)** without requiring repairs or improvements to the Property. Appraisals are often a reliable source to verify square footage of the subject Property. However, the ability to cancel based on the measurements provided in an appraisal falls within the Investigation of Property contingency. The appraisal contingency is solely limited to the value determined by the appraisal. For any cancellation based upon this appraisal contingency, Buyer shall Deliver a Copy of the written appraisal to Seller upon request by Seller.
- (2) **NO APPRAISAL CONTINGENCY:** If "No appraisal contingency" is checked in **paragraph 3L(2)**, then Buyer may not use the loan contingency specified in **paragraph 3L(1)** to cancel this Agreement if the sole reason for not obtaining the loan is that the appraisal relied upon by Buyer's lender values the property at an amount less than that specified in **paragraph 3L(2)**. If Buyer is unable to obtain the loan specified solely for this reason, Seller may be entitled to Buyer's deposit or other legal remedies.
- (3) Fair Appraisal Act: The Parties acknowledge receipt of the attached Fair Appraisal Act Addendum (C.A.R. Form FAAA).

C.A.R. Forms: RPA, paragraph 8B(3)

- Every contract for sale of real property shall contain
- As of July 1, 2022
- Civil Code 1102.6g
- Referenced in and bundled with RPA, RIPA, CPA, VLPA, NODPA, NCPA, ABSPA, CCSPA



FAIR APPRAISAL ACT ADDENDUM (C.A.R. Form FAAA, 6/22)

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

Any appraisal of the property is required to be unbiased, objective, and not influenced by improper or illegal considerations, including, but not limited to, any of the following: race, color, religion (including religious dress, grooming practices, or both), gender (including, but not limited to, pregnancy, childbirth, breastfeeding, and related conditions, and gender identity and gender expression), sexual orientation, marital status, medical condition, military or veteran status, national origin (including language use and possession of a driver's license issued to persons unable to provide their presence in the United States is authorized under federal law), source of income, ancestry, disability (mental and physical, including, but not limited to, HIV/AIDS status, cancer diagnosis, and genetic characteristics), genetic information, or age.

If a buyer or seller believes that the appraisal has been influenced by any of the above factors, the seller or buyer can report this information to the lender or mortgage broker that retained the appraiser and may also file a complaint with the Bureau of Real Estate Appraisers at <https://www2.brea.ca.gov/complaint/> or call (916) 552-9000 for further information on how to file a complaint.

By signing below, Buyer and Seller has each read, understands and acknowledges receipt of a copy of this Fair Appraisal Act Addendum.



More on Appraisals

- Is an appraisal an opinion or a fact?
- Who is intended beneficiary of appraisal?
- When does an appraisal need to be disclosed?

No-liability cases:

Graham v. Bank of America, N.A.,

226 Cal.App.4th 594, (2014) Fourth Appellate District, Division 1

Willemsen v. Mitrosilis,

230 Cal.App.4th 622 (2014) Fourth Appellate District, Division 3

Liability cases:

Soderberg v. McKinney

44 Cal.App.4th 1760, (1996) Second Appellate District, Division 1

Mitteldorf v. B&W Appraisal Services, Inc. (unpublished)

2017 WL 120905 (2017) Second Appellate District

Miller & Starr California Real Estate:

Section 1:152:

Opinion by an appraiser. An **appraiser** is a professional assumed to have superior knowledge on the subject of property valuation and thus may be liable for an erroneous **opinion** of **value** when the **appraisal** is intentionally in error to induce a buyer or lender to enter into a transaction, or because of a negligent evaluation of property that is below the industry standard of care.¹⁸ In order to pursue a claim against the **appraiser**, the plaintiff must be in the class of persons intended to rely on it.¹⁹ A statement of **value** based on a third party **appraisal** procured by a party is not actionable by the other party, and a **value opinion** formed by a non-professional or the other party cannot be relied upon as a basis for a claim of fraud or misrepresentation of **value**.²⁰

More on Appraisals

C.A.R. Forms: RPA, paragraphs 8B(1) and 12D

- government employee, unless required by Law.
- D. Seller shall make the Property available for all Buyer Investigations. Seller is not obligated to move any existing personal property. Seller shall have water, gas, electricity and all operable pilot lights on for Buyer's Investigations and through the date possession is delivered to Buyer. Buyer shall, (i) by the time specified in **paragraph 3L(3)**, complete Buyer Investigations and satisfy themselves as to the condition of the Property, and either remove the contingency or cancel this Agreement, and (ii) by the time specified in **paragraph 3L(3) or 3 Days** after receipt of any Investigation report, whichever is later, **give Seller at no cost, complete Copies of all such reports obtained by Buyer, which obligation shall survive the termination of this Agreement. This Delivery of Investigation reports shall not include any appraisal, except an appraisal received in connection with an FHA or VA loan.**

B. APPRAISAL:

- (1) This Agreement is, **unless otherwise specified in paragraph 3L(2) or an attached CR form**, contingent upon a written appraisal of the Property by a licensed or certified appraiser at no less than the amount specified in **paragraph 3L(2)**, without requiring repairs or improvements to the Property. Appraisals are often a reliable source to verify square footage of the subject Property. However, the ability to cancel based on the measurements provided in an appraisal falls within the Investigation of Property contingency. The appraisal contingency is solely limited to the value determined by the appraisal. **For any cancellation based upon this appraisal contingency, Buyer shall Deliver a Copy of the written appraisal to Seller, upon request by Seller.**

RECENT LITIGATION

Premises Liability

Rucker v. WINCAL (2022) 74 Cal.App.5th 883 (Second Appellate District, Division x)

Recreational immunity statute (CC 846) protects owner if jogger who ventures into street b/c homeless encampment on property where she was jogging

Mayes v. La Sierra University (2022) 73 Cal.App.5th 686, (Fourth Appellate District, Division 2)

Sports venue had duty to undertake reasonable measure to protect attendee of baseball game

Nunez v. Redondo Beach (2022) 81 Cal.App.5th 749, (Second Appellate District, Division 3)

City not responsible for injury caused by tripping over trivial defect in sidewalk

Joshi v. Fitness International (2022) 80 Cal.App.5th 814, (Sixth Appellate District)

Fitness center not responsible for light out in sauna if unknown and regular inspections made

Montes v. Y.M.C.A of Glendale (2022) 81 Cal.App.5th 1134, (Second Appellate District, Division 8)

Owner of apartment building not responsible for drunk and high tenant who falls off roof

Issakhani v. Shadow Glen (2021) 63 Cal.App.5th 917 (Second Appellate District, Division 2)

HOA not responsible for injury to visitor crossing street because not enough parking

Hoffmann v. Young (2022) 13 Cal.5th 1257 (California Supreme Court)

Recreation immunity applies if owner or agent did not invite injured person on to land

Gonzalez v. Mathis (2021) 12 Cal.5th 29 (California Supreme Court)

Homeowner not responsible for injury to independent contractor who had control of worksite

(*Privette* rule extended to commercial property as well in other cases)

Real Estate Broker Issues

Real Estate Broker Disclosure

Grief v. Sanin (2022) 74 Cal.App.5th 412 (Fourth Appellate District)

Buyer's exclusive broker had no duty to unrepresented seller to disclose FMV. Commercial property so Civil Code duties in 2079.16 did not apply.

Real Estate Broker Compensation

Christopher Moehrl et al. v. NAR, Realogy, et al. U.S. District Court Northern District Illinois Eastern Division; 1:19-cv-01610

Joshua Sitzler et al. v. NAR, Realogy et al. U.S. District Court Western District of Missouri No. 4:19-cv-00332-SRB

Class actions claiming MLS offer of compensation unlawful

Buyer Representation Forms: Buyer Representation and Broker Compensation Agreement (C.A.R. Form BRBC)



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 **3**, and Seller 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 _____

- Representation period in days
- Default to non-exclusive and defines Broker Involvement
- Right to cancel for either party, but 30-day requirement for exclusive
- Broker obligated to disclose potential compensation to buyer
- Broker authorized to ask seller to pay for compensation

Buyer Representation Forms: Anticipated Broker Compensation Disclosure(C.A.R. Form ABCD)



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 the terms of a Multiple Listing Service (MLS), Cooperating Broker Compensation Agreement (C.A.R. Form CBC), Commission Agreement (C.A.R. Form CA), Single Party Compensation Agreement (C.A.R. Form SP), or Other as specified in the “Source” 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 Broker has already provided Buyer with a copy of a MLS profile sheet 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 <input type="checkbox"/> _____ |
| ____/____/____ | _____ | ____/____/____ | _____% of Price OR \$ _____ | <input type="checkbox"/> MLS <input type="checkbox"/> CBC <input type="checkbox"/> _____ |

- Disclosure that broker will be paid
- Seller to take into account whether paying directly or indirectly
- Broker will disclose on each shown or offered property
- Buyer needs to initial for each property
- Seller discloses final compensation in last section
- Buyer can but does not have to initial last section

Other Issues

Short term rentals

Kracke v. City of Santa Barbara (2021) 63 Cal.App.5th 1089 (Second Appellate District, Division 6)

Restriction on short term rentals previously allowed requires coastal commission approval

Keen v. City of Manhattan Beach (2022) 77 Cal.App.5th 142 (Second Appellate District, Division 8)

Amendment prohibiting short term rentals requires coastal commission approval

COVID Insurance Liability

Amy's Kitchen v. Fireman's (2022) (Second Appellate District, Division 3)

City not responsible for injury caused by tripping over trivial defect in sidewalk

Marina Pacific Hotel v. Fireman's (2022) 81 Cal.App.5th 96 (Second Appellate District, Division 7)

Insured stated a claim that COVID caused physical damage survives demurrer.

Questions?