

CAR changes commission-sharing on forms following DOJ inquiry

The California Association of Realtors says even though offers of compensation among brokers remain legal, members and their clients should not rely on 'historically common practices'

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About three weeks after [delaying the rollout of transaction forms](#) due to an inquiry from the U.S. Department of Justice, the California Association of Realtors released the new forms Wednesday without broker-to-broker offers of compensation.

In a statement, the trade group told Inman it had released a total of 30 new and revised forms on July 10 — the remaining forms that are part of its semi-annual standard forms update — with a key change: references to commission-sharing have been taken out.

“While numerous changes have been made to these forms, we anticipate one change in particular — removing the listing broker’s offer of compensation to a buyer’s broker from these forms — will become important in the near future,” C.A.R. General Counsel Brian Manson said in a statement.

“After careful and thoughtful deliberation, C.A.R. has concluded that members and their clients are best served by making informed compensation decisions without relying on historically common practices.

“While we recognize that offers of compensation among brokers remain legal, our goal with this change is to be proactive, looking ahead to where real estate practices are moving.”

Manson emphasized the need for the industry to adapt to the changes brought about by legal and regulatory attention on the real estate industry’s commission structure.

“C.A.R. needs to lead the way within the industry, as we have always done,” he said.

“By doing so, we will get through this moment, do what we need to do to adapt, and emerge even stronger as an industry of professionals who work tirelessly every day to support the dream of homeownership.”

The 30 forms are meant to help C.A.R.’s more than 180,000 members “work with their clients in light of impending practice changes” associated with a proposed nationwide [settlement](#) between the National Association of Realtors and [homeseller plaintiffs](#) in multiple antitrust lawsuits, according to Manson.

The NAR settlement includes several rule changes set to go into effect on August 17, including a prohibition on listing brokers making offers of compensation to buyer brokers on multiple listing services and a requirement that brokers and agents sign [contracts with buyers](#) they are working with before a buyer tours a home.

On June 21, C.A.R. confirmed to Inman that it was postponing the release of 21 forms associated with the business practice changes required by the NAR settlement after receiving an inquiry from the DOJ regarding the forms and feedback from its members. The trade group did not provide additional details about the forms or describe the nature of the DOJ’s inquiry.

However, in the following days, the Consumer Federation of America published two reports criticizing two of C.A.R.'s new forms as "anti-consumer": its [buyer representation agreement](#) and its [listing agreement](#).

The consumer watchdog said it had written to the DOJ in April criticizing C.A.R.'s new seller listing agreement for "seeming to allow clauses in almost all current listing contracts that require broker commission sharing" that "would seem to make it considerably easier for Realtors to continue practices that fix commissions."

The nonprofit suggested "these contracts should be changed to remove all references to broker commission sharing," which seems to be what C.A.R. has done.

"C.A.R. and its attorneys appear to be in disarray, with sharp criticism not only from DOJ and consumer advocates but also from many California Realtors," said Stephen Brobeck, a CFA senior fellow, in a statement.

"And this criticism has left its mark. The July 9 forms have major differences from earlier ones."

Brobeck declined to comment on specific differences. The author of CFA's reports, University of Buffalo contracts law professor [Tanya Monestier](#), also declined to comment for this story.

C.A.R. declined to share the finalized forms with Inman, saying they were available only to members. The trade group also declined to say which specific parts of the forms were changed.

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However, Inman was able to obtain two of the new forms: a [residential listing agreement](#) and a [multiple listing service addendum](#).

The finalized listing agreement removes this contract term from the document: "Optional additional compensation, if any, to Seller's Broker to be offered to Buyer's brokers," whether the seller was offering a percentage of the purchase price or a dollar amount, and related language having to do with offers to compensate the buyer's broker.

The new listing agreement also removes references to seller concessions, to what an MLS is, and to the National Association of Realtors' Clear Cooperation Policy, which requires listing brokers to submit a listing to their MLS within one business day of marketing a property to the public.

Instead, this language has been moved to the two-page MLS addendum, whose terms and conditions are incorporated as part of the seven-page listing agreement, bringing the total number of pages sellers must read to nine.

C.A.R. declined to comment on why these clauses have been moved to a separate addendum.

Asked whether C.A.R. is still revising any forms to address the DOJ's concerns, C.A.R. spokesperson Lotus Lou told Inman, "As we do twice each year, our forms are revised based on various factors."

Ed Zorn, general counsel for California Regional MLS, praised C.A.R.'s changes as "courageous" and said they would benefit consumers.

“C.A.R. has made this commitment to ‘we’re not going to facilitate or create a Realtor-created document that continues the old practice of commission-sharing off the MLS,’ and I applaud them for doing that,” Zorn told Inman in an interview.

“I personally think it’s a wise move and is supportive of this transition away from commission-sharing.”

He expects the changes to be “influential” and impact what other states choose to do with their forms. Zorn, a broker himself who practices in Tennessee, says he won’t use a form with commission-sharing in it.

“The controversy around the forms is: Does your Realtor-created form support and facilitate the sharing of commissions between brokers and therefore anticipate off-MLS offers of compensation? Is that written in your form or not?” Zorn said.

“If the standardized forms keep commission sharing, again, you keep the same old system now, it’s just instead of it being on the MLS, you make a telephone call. It would be silly for us to think we’re going to end up with some kind of different outcome simply because now I get my information from a telephone call instead of from the MLS.”

“The only way you can use the C.A.R. form now is ... where a listing agent talks only about their own fee and waits until later to deal with ‘Does the buyer make some kind of request for something in the offer?’” he added.

The new C.A.R. forms will become available for members’ use on July 24.

“We wanted to make drafts available to members on our website so they can begin to familiarize themselves with the forms and so they can begin taking education courses to use the forms,” Lou said.

“Two new courses were made available [Wednesday] – a Buyer Representation Form class and a Residential Listing Form class – both are free to members.”

Asked why there is a discrepancy with the number of forms previously held back and the number of forms just-released, Lou said, “When we make changes to the Residential Listing Agreement or Residential Purchase Agreement, other listing and purchase agreements are conformed to the changes, respectively.”

The DOJ declined to comment for this story.