

THE BRBC: EXCLUSIVE OR NON-EXCLUSIVE?

MAY 10, 2024

In anticipation of the upcoming practice changes resulting from the NAR settlement, C.A.R. is releasing a series of short articles about C.A.R.'s Buyer Representation and Broker Compensation Agreement (C.A.R. Form BRBC). In this article, we discuss the differences between exclusivity and non-exclusivity when using the BRBC.

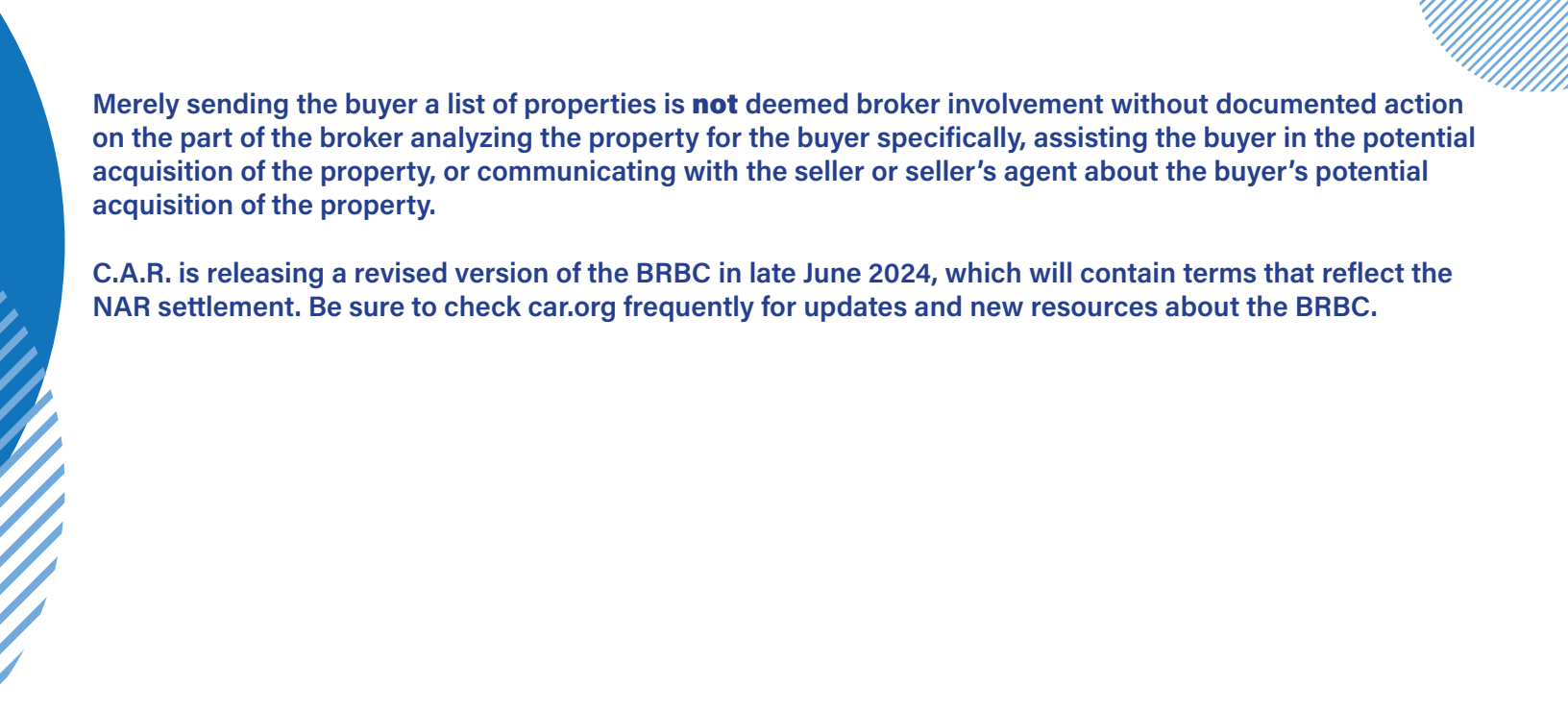
Under the BRBC, a broker and a buyer can enter into an exclusive or non-exclusive relationship. The BRBC defaults to non-exclusive representation, though the parties may opt to select exclusive representation instead.

There are two main differences between exclusivity and non-exclusivity:

	Exclusive	Non-Exclusive
Right to compensation	The broker is entitled to compensation if, during the term of the contract, the buyer purchases a property that fits the contract's parameters (e.g., single-family home, duplex, etc.), whether or not the broker was involved. The broker would get paid even if the buyer acts alone or with a different broker, so long as the other requirements are met.	The broker is entitled to compensation if, during the term of the contract, the buyer purchases a property that fits the contract's parameters AND there was broker involvement. (See below for an explanation of what "broker involvement" means.)
Cancellation	Unilateral cancellation (i.e., a cancellation by one party) is effective 30 days after receipt of the cancellation notice.	Unilateral cancellation is effective immediately upon receipt of the cancellation notice.

As noted above, in order for a broker to receive compensation in a non-exclusive relationship, there must be broker involvement. "Broker involvement" means any of the following:

1. The buyer physically entered and was shown the property by the broker;
2. The broker showed the property to the buyer virtually;
3. The broker submitted to the seller a signed, written offer from the buyer to acquire, lease, exchange, or obtain an option on the property;
4. The broker performed a market analysis related to the property or reviewed property-specific documents or disclosures with the buyer; or
5. 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.



Merely sending the buyer a list of properties is **not** deemed broker involvement without documented action on the part of the broker 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.

C.A.R. is releasing a revised version of the BRBC in late June 2024, which will contain terms that reflect the NAR settlement. Be sure to check car.org frequently for updates and new resources about the BRBC.

