

Unrepresented Buyers and Listing Brokers: Part 1

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 refuse to present an offer from an unrepresented buyer? As a general rule, “no.” The listing broker has a duty to the seller to present all offers received, unless instructed otherwise, in writing, by the seller. If the listing broker is uncomfortable proceeding in a transaction with an unrepresented buyer, the listing broker should discuss this with the seller at the time of taking the listing. Possibly the listing broker is concerned about additional work, time, effort and risk that may result if the buyer is unrepresented or that the transaction could possibly be more difficult, especially if the buyer is unsophisticated and inexperienced. However, at the time of taking a listing it will be unknown if an unrepresented buyer does not know what they are doing, or has purchased many properties previously, or maybe is an agent or broker acting on their own.

May a listing broker receive extra compensation if the listed property is purchased by an unrepresented buyer?

Yes. Paragraph 2C(2) of the C.A.R. Residential Listing Agreement (C.A.R. Form RLA) provides for the seller to pay the listing broker **additional** compensation if the buyer is unrepresented. Paragraph 2C(2) is an optional paragraph and will only apply if the box in the third column is checked, at the time the listing is taken. The amount that the listing broker charges if there is an unrepresented buyer is up to the seller and listing broker. Whether 2C(2) is checked, and regardless of the amount of compensation specified in 2C(2), the listing broker is still entitled to the amount of compensation specified in paragraph 2C(1) for representing the seller.

Why might a listing broker, at the time the listing is taken, ask the seller for additional compensation if a buyer is unrepresented? Because an unrepresented buyer may likely make additional demands on the listing broker that would not be present if the buyer was represented such as asking for forms, allowing access to the property and interacting with escrow, title and inspectors. All of these activities expose the listing broker to additional risk but the listing broker may need to provide some of those services to facilitate the sale for the seller’s benefit and thus fulfill the listing broker’s fiduciary duty to the seller.

May a seller refuse to receive offers from unrepresented buyers? Yes, but there is little incentive for a seller to do so. The offer may be professionally prepared by an experienced investor or poorly prepared by a novice purchaser. It is most likely in the seller’s best interest to receive all offers, even those from unrepresented buyers, and then decide how to respond, if at all, to such offers on their merits, including taking into account that the buyer is unrepresented (See Unrepresented Buyers, Part 2).

If a listing broker charges the seller an additional fee if a buyer is unrepresented, does that make the listing broker a dual agent?

No. Agency is a consensual relationship that requires mutual agreement for the agent to represent the principal. The fact that a seller is paying the listing broker extra, or not, for a transaction involving an unrepresented buyer does not in and of itself create an agency relationship between the listing brokerage and the buyer.