

Agency Disclosure And Confirmation

Member Legal Services
Tel 213.739.8282
Fax 213.480.7724
April 25, 2007 (revised)

Copyright© 2007, CALIFORNIA ASSOCIATION OF REALTORS® (C.A.R.) Permission is granted to C.A.R. members only to reprint and use this material for non-commercial purposes provided credit is given to the C.A.R. Legal Department. Other reproduction or use is strictly prohibited without the express written permission of the C.A.R. Legal Department. All rights reserved.

California real estate licensees involved in certain types of real property transactions are required to provide written disclosures to both the seller and buyer of the agency relationship options which are available, to secure their agreement to a particular form of agency, and to confirm that agreement in writing.

There has been tremendous confusion regarding the terms, "*disclosure*" and "*confirmation*," two very different steps in the agency disclosure process that must be given to the principals at different times during the real estate transaction. In fact, even the appellate courts have confused the meaning of these terms.

The term, "agency disclosure" really should be called "agency education" because the agency disclosure form (C.A.R. Standard Form AD) is a statutorily-defined form that educates the seller and the buyer as to the duties and responsibilities of a listing agent, selling agent, and dual agent. Its purpose is not to select who is representing whom. The function of the "agency confirmation" paragraph in the purchase agreement or the "agency confirmation" form (C.A.R. Standard Form AC-6) is to inform the seller and buyer as to who is representing whom and whether or not an office is acting as a dual agent in this particular transaction.

The agency disclosure laws can be found in California Civil Code Sections 2079.13 *et seq.*

The following questions and answers address some of the most commonly-asked questions regarding these laws.

Q 1. To what transactions do the "agency disclosure laws" apply?

A The agency disclosure laws apply to sales, exchanges, and leases for more than one year, involving real property improved with one-to-four dwelling units, stock cooperatives, and mobilehomes. The law applies regardless of whether the property is owner-occupied or not. (Cal. Civ. Code § 2079.13 (j).)

Q 2. How do licensees comply with the requirement to provide the written agency disclosure form to both the seller and the buyer?

A Real estate licensees must provide the buyer and the seller with a statutorily-defined disclosure form entitled "Disclosure Regarding Real Estate Agency Relationships" (C.A.R. Standard Form AD) in every applicable transaction (Cal. Civ. Code § 2079.16).

LISTING AGENT:

The listing agent must provide this disclosure form (AD) to the seller prior to entering into a listing agreement (Cal. Civ. Code § 2079.14 (a)). This AD form will be signed by the listing agent and the seller.

SELLING AGENT:

The selling agent must provide this form (AD) to the buyer, as soon as practicable, prior to the execution of the buyer's offer to purchase. Actually, prior to the execution of the buyer's offer to purchase is the latest point in time at which the form should be provided. In fact, the disclosure form should be provided to the buyer as soon as that buyer seeks the services of the agent in more than a "casual, transitory, or preliminary manner," with the object of entering into a real property transaction. (Cal. Civ. Code § 2079.14 (d).) This AD form will be signed by the selling agent and the buyer.

IN ADDITION: the selling agent must also provide the disclosure form (AD) to the seller (unless the selling office and the listing office are the same) and this form should be provided to the seller as soon as practicable prior to presenting the seller with an offer (Cal. Civ. Code § 2079.14 (b)). This AD form will be signed by the selling agent and the seller.

In other words, both the listing agent and the selling agent must provide the seller with separate disclosure forms. Therefore, in a transaction with two different offices, the seller will receive two disclosure forms (one from the listing agent and signed by the listing agent and the seller, one from the selling agent and signed by the selling agent and the seller) while the buyer will only receive one disclosure form (from the selling agent signed by the selling agent and the buyer).

If the same office represents both sides, the buyer and seller will each receive only one. Each time a client receives a disclosure form, he/she should sign it acknowledging receipt, and give a copy back to the licensee who gave it to him/her.

Q 3. How does the selling agent go about providing a disclosure form to the seller?

A The selling agent has the option of either (1) handing the disclosure form to the seller, (2) giving it to the listing agent who is then required to give it to the seller, or (3) sending it by certified mail addressed to the seller at his/her last known address (in which case no signed acknowledgment of receipt is required) (Cal. Civ. Code § 2079.14 (c)).

It should be noted that the listing agent is not required to receive a copy of the disclosure form that the selling agent provides to the buyer and the selling agent is not required to receive a copy of the disclosure form that the listing agent provides to the seller.

To repeat, the selling agent must give the seller a brand new, unsigned disclosure form, rather than simply a copy of the disclosure form that has already been given to the buyer. If the transaction is done correctly, three separate agency disclosure forms will have been provided to the principals in the transaction: two to the seller and one to the buyer.

Q 4. *How and when does the confirmation of the agency relationships take place?*

A Both the listing agent (this means listing office) and selling agent (this means selling office) must "elect" (i.e., choose) which form of agency representation they desire, as soon as practicable. These relationships must then be "confirmed" either in one or more statutorily-defined agency confirmation forms (e.g., C.A.R. Standard Form AC-6) or in a purchase contract which includes the statutorily-defined agency confirmation language such as the C.A.R. "Real Estate Purchase Contract and Receipt for Deposit" (C.A.R. Standard Form RPA-CA). (Cal. Civ. Code § 2079.17.)

Note that different salespersons or broker-associates within one firm cannot have different agency relationships with a principal. All licensees within a firm must represent the same parties in a transaction. In other words, the office is the agent for the principal.

Q 5. *May a buyer and seller sign separate copies of the agency confirmation form?*

A Yes. The buyer, seller, and licensees may execute separate copies of the agency confirmation form, or they may all sign the same form, or they may all confirm their agency relationships in the purchase agreement containing the required agency confirmation language.

Q 6. Which agency relationships can the listing agent and selling agent elect?

A The selling agent may be an agent for the buyer exclusively, an agent for the seller exclusively, or an agent for the buyer and the seller (dual agent). On the other hand, the listing agent may only be an agent for the seller exclusively, or an agent for the buyer and seller (dual agent). Thus the selling agent has three options and the listing agent has two. (Cal. Civ. Code § 2079.18.)

Q 7. Is it possible to change the agency relationship(s) during escrow?

A Yes, providing there is written consent of the parties (Cal. Civ. Code § 2079.23). The easiest way to accomplish this is to provide the seller and the buyer another copy of the agency confirmation form (C.A.R. Standard Form AC-6) indicating the appropriate changes to the agency relationships and have all parties execute it.

Q 8. Which agency disclosure forms does a listing agent have to keep in his or her files?

A The listing agent must keep for three years all documents signed by the agent or obtained by the agent in connection with any real estate transaction (Cal. Bus. & Prof. Code § 10148). Thus, the agent (office) must keep copies of all AD forms signed by the seller. If the AC-6 (confirmation) form was used and signed by the seller, it must also be in the file. This includes the "second" AD form signed by the seller and the selling agent.

Q 9. Which agency disclosure forms does a selling agent have to keep in his or her files?

A The selling agent must keep for three years all documents signed by the agent or obtained by the agent in connection with any real estate transaction (Cal. Bus. & Prof. Code § 10148). Thus, the agent (office) must keep copies of all AD forms signed by the buyer. If the AC-6 (confirmation) form was used and signed by the buyer, it must also be in the file. This includes the "second" AD form signed by the seller and the selling agent.

Q 10. Where can I obtain additional information?

A This legal article is just one of the many legal publications and services offered by C.A.R. to its members. For a complete listing of C.A.R.'s legal products and services, please visit *C.A.R. Online* at www.car.org.

Readers who require specific advice should consult an attorney. C.A.R. members requiring legal assistance may contact C.A.R.'s Member Legal Hotline at 213.739.8282. C.A.R. members who are broker-owners, office managers, or Designated REALTORS® may contact the Member Legal Hotline at 213.739.8350 to receive expedited service. The access times are Monday through Friday, 9:00 A.M. to 6:00 P.M. Members may also fax or e-mail inquiries to the Member Legal Hotline at 213.480.7724 or legal_hotline@car.org. Written correspondence should be addressed to:

California Association of REALTORS®
Member Legal Services
525 South Virgil Avenue
Los Angeles, California 90020

The information contained herein is believed accurate as of April 16, 2007. It is intended to provide general answers to general questions and is not intended as a substitute for individual legal advice. Advice in specific situations may differ depending upon a wide variety of factors. Therefore, readers with specific legal questions should seek the advice of an attorney.