

Disclosure Potpourri II (C.A.R. has a form for that!)

Broker Disclosures Can Be Defined or Open-Ended. Certain broker disclosures are defined by statute. For example, Civil Code §2079.14 requires agents to deliver an Agency disclosure prior to the client entering into a listing or buyer representation agreement. Civil Code §2079 obligates a broker to conduct a reasonably competent, diligent, visual inspection of residential property with 1-4 units. Other disclosures are more amorphous as courts have interpreted, or not, certain conduct falling under a broker's fiduciary or non-fiduciary duty. For example, a broker should not pass along information from a third party without identifying the source of the information and either verifying the information or expressing that the information has not been verified (*Salahutdin v. Valley of California*), but agents do not have an obligation to give tax advice to clients (*Carleton v. Tortosa*), or to warn purchaser of the danger of an empty pool (*Jacobs v. Coldwell Banker*). Because broker duties are not always defined, certain practices, even if not specifically identified in the law, are advisable to ward off legal claims.

Non-Contingent Offers. When working with a buyer who feels compelled to make a non-contingent offer to get an offer accepted, consider providing the buyer with a Non-Contingent Offer Advisory (C.A.R. form NCOA) informing the buyer of risks associated with such offers.

Investigations. The Buyer's Investigation Advisory (C.A.R. form BIA) itemizes 14 categories of investigations that may be applicable. Even if all are not relevant to your buyer, the form may trigger some that are, and what is important to one buyer may or may not be of concern to another. Don't let a buyer think this form bundled with purchase agreements is just boilerplate. Use the Statewide Buyer and Seller Advisory (C.A.R. form SBSA) to further help the buyer think about potentially relevant issues. If a buyer decides to skip common investigations, like pest and home inspections, or ignore recommendations made by professionals, make sure to document your own file with, as applicable, the Buyer Investigation Election (C.A.R. form BIE) and Buyer Investigation Waiver (C.A.R. form BIW). Remember the BIE can be updated if the buyer later decides to have investigations originally skipped. Many buyers, especially first-time buyers, may not be familiar with the difficult insurance market or the nuances of homeowner association living. Help them understand by pointing out the Buyer Homeowners' Insurance Advisory (C.A.R. form BHIA) or using the Buyer Homeowners' Association Advisory (BHAA). Buyers who are buying for income purposes can be provided with the Rental Property Owner Advisory (C.A.R. form RPOA), or Short Term (Vacation) Rental Advisory (C.A.R. form SVRA) which discusses the risks of such ownership.

Beyond the scope of broker expertise / Legal Advice. Sometimes, buyers and sellers have questions that are just beyond an agent's expertise or require legal analysis. Good examples include the consequences of removing contingencies, releasing or holding a deposit, or identifying the costs of repairs or potential structural integrity problems identified in a report. In those cases, a good idea is to access the C.A.R. Sample Letter Library in zipForm and provide the Acting Against Broker Advice letter. There is one for buyers and one for sellers. It is better to make a referral for an area outside of your expertise than to act as if you know something that you don't and have your client rely on your best guess.