

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2023-2024 Regular Session**

AB 2992 (Stephanie Nguyen)  
Version: June 25, 2024  
Hearing Date: July 2, 2024  
Fiscal: Yes  
Urgency: No  
AM

**SUBJECT**

Real Estate Law: buyer-broker agreements

**DIGEST**

This bill requires a buyer's agent and a buyer to execute a buyer-broker representation agreement as soon as practicable, but no later than the execution of the buyer's offer to purchase real property, as provided.

**EXECUTIVE SUMMARY**

A buyer-broker agreement is a document that establishes a business agreement between the buyer and a real estate broker, and describes the scope of their duties. Current state law does not require such an agreement to be executed between a realtor and the buyer of real property. This bill seeks to address recent changes in the real estate business in light of the National Association of Realtors settlement that was entered into earlier this year. The bill requires a buyer's agent and a buyer to execute a buyer-broker representation agreement as soon as practicable, but no later than the execution of the buyer's offer to purchase real property. The bill does not change any existing duties or responsibilities of realtors under existing law. The bill is sponsored by the California Association of Realtors. No timely support or opposition was received by this Committee. This bill passed the Senate Business, Professions and Economic Development Committee on a vote of 12 to 0.

**PROPOSED CHANGES TO THE LAW**

Existing law:

- 1) Defines a "real estate broker" as a person who, for a compensation or in expectation of compensation, regardless of the form or time of payment, does or negotiates to do one or more of the following acts for another or others:

- a) Sells or offers to sell, buys or offers to buy, solicits prospective sellers or purchasers of, solicits or obtains listings of, or negotiates the purchase, sale or exchange of real property or a business opportunity.
  - b) Leases or rents or offers to lease or rent, or places for rent, or solicits listings of places for rent, or solicits for prospective tenants, or negotiates the sale, purchase or exchanges of leases on real property, or on a business opportunity, or collects rents from real property, or improvements thereon, or from business opportunities.
  - c) Assists or offers to assist in filing an application for the purchase or lease of, or in locating or entering upon, lands owned by the state or federal government.
  - d) Solicits borrowers or lenders for or negotiates loans or collects payments or performs services for borrowers or lenders or note owners in connection with loans secured directly or collaterally by liens on real property or on a business opportunity.
  - e) Sells or offers to sell, buys or offers to buy, or exchanges or offers to exchange a real property sales contract, or a promissory note secured directly or collaterally by a lien on real property or on a business opportunity, and performs services for the holders thereof. (Bus. & Prof. Code § 10131.)
- 2) Licenses and regulates real estate brokers by the Department of Real Estate pursuant to the Real Estate Law. (Bus. & Prof. Code § 10000 et seq.)
- a) States that it is unlawful for any licensed real estate broker to employ, compensate, directly or indirectly, any person for performing any services for which a license is required under the law, as specified. (Bus. & Prof. Code § 10137.)
  - b) Prohibits a real estate sales person from being employed or accepting compensation for activity requiring a real estate license from any person other than the broker under whom they are licensed. (*Ibid.*)
- 3) States that it is unlawful for any licensed real estate salesperson to pay any compensation for performing acts for which a license is required to any real estate licensee except through the broker under whom they are at the time licensed. (*Ibid.*)
- 4) Establishes the duties of a real estate broker or salesperson, licensed under provisions of the Business and Professions Code, to a prospective buyer of residential real property, including fiduciary duties of care and duties of disclosure. (Civ. Code § 2079-2079.25.)
- a) Requires certain disclosures to be provided by a buyer's agent to the buyer as soon as practicable before execution of the buyer's offer to purchase. (Civ. Code § 2079.14.)
- 5) Prohibits an exclusive listing agreement regarding single-family residential property from lasting longer than 24 months from the date the agreement was made. (Civ. Code § 1670.12(b).)

This bill:

- 1) Requires a buyer-broker representation agreement to be executed between a buyer's agent and buyer as soon as practicable, but no later than the execution of the buyer's offer to purchase real property.
  - a) Defines "buyer-broker representation agreement" as a written contract between a buyer of real property and a buyer's agent by which the buyer's agent has been authorized by the buyer to provide specified services for or on behalf of the buyer for which a real estate license is required pursuant to the terms of the agreement.
- 2) Makes it unlawful for a buyer-broker representation agreement to last longer than three months from the date the agreement was made, except for agreements entered into between a real estate broker and a corporation, limited liability company, or partnership.
- 3) Prohibits a buyer-broker representation agreement from renewing automatically. Authorizes a renewal of a buyer-broker representation agreement, if the renewal is in writing, dated, and signed by all parties to the agreement.
- 4) Specifies that a buyer-broker representation agreement to include, but not be limited to, the following terms related to:
  - a) compensation of the real estate broker;
  - b) services to be rendered;
  - c) when compensation is due; and
  - d) contract termination.
- 5) Requires the buyer's agent to provide a specified disclosure form to the buyer prior to the execution of a buyer-broker representation agreement.
- 6) Specifies that a buyer-broker representation agreement that violates the terms described above is void and unenforceable.
- 7) Specifies that any person licensed by the Real Estate Law who violates the provisions related to buyer-broker representation agreements is deemed to have violated their licensing law.
- 8) Makes various conforming changes.

## COMMENTS

### 1. Stated need for the bill

The author writes:

Currently, in a real estate transaction, listing agents are paid by the homeowner for their work. Therefore, the home seller and listing agent always have a written contract, which specifies their agency relationship and compensation terms. Unlike sellers, buyers are not obligated to have a written agreement with their realtor. AB 2992 requires a time-limited contractual agreements between Realtors and homebuyers that cannot last longer than three months. Requiring a contract between realtors and homebuyers in California enhances transparency and consumer satisfaction. With a clear agreement, buyers will better understand their agent's role and ensure that their interests will come first. This bill sets expectations on commissions, timelines, and communication, and will lead to a smoother transaction. If enacted, AB 2992 would also align with the recent national agreement in regards to broker commissions.

### 2. National Association of Realtors (NAR) settlement

On March 15th, 2024, NAR announced an agreement to settle nationwide claims brought by home sellers regarding broker commissions. Preliminary approval for the settlement was granted approval in federal court in April and a final approval hearing has been set for November of this year.<sup>1</sup> The settlement is a result of a federal class-action antitrust lawsuit, *Burnett v. National Association of Realtors et al.*, initiated in Kansas City, Missouri, where a jury ruled in favor of the plaintiffs, finding that the NAR and major brokerages colluded to artificially raise seller commissions. As part of the settlement, NAR agreed to no longer require a broker advertising a home for sale on the Multiple Listing Service (MLS) to offer any upfront compensation to a buyer's agent, and MLSs must eliminate any fields indicating broker compensation. Additionally, agents cannot be compelled to join MLSs to transact or receive payment.

As part of the settlement agreement, MLS members interacting with buyers must enter formal representation agreements with the buyers beginning July 2024 to ensure homebuyers know what their agent will charge them for their services. Traditionally, the seller of the property would pay a real estate agent commission of roughly 6 percent of the property's selling price, even though commission rates have always been open to negotiation. The commission is split between the buyer's agent and the seller's agent. This had been widely accepted as part of the real estate selling process. However, the

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<sup>1</sup> *Court Grants Preliminary Approval of NAR Settlement*, Nat. Ass. of Realtors, (Apr. 24, 2024), available at <https://www.nar.realtor/magazine/real-estate-news/law-and-ethics/court-grants-preliminary-approval-of-nar-settlement>.

NAR settlement upended this process, and realtors may now be able to compete on commissions. This will permit prospective buyers the ability to shop around on rates before they commit to buying a home. Brokers may begin to advertise their fees, allowing customers to choose lower-cost agents.

3. This bill requires buyers and brokers to enter into a contract establishing the scope of the relationship no later than the execution of the buyer's offer to purchase real property

This bill is brought as a result of the changes in the industry due to the NAR settlement. California does not currently require a written agency agreement between buyers and their agents, but it does require a written agency agreement between listing agents and the sellers they represent in a real estate transaction. California law also requires listing agents, buyer's agents, and those agents acting as dual agents in a real estate transaction to provide an agency disclosure form specified in Civil Code 2079.14 to a principal. The agency disclosure form, while an important one, is not an equivalent to an agreement between the principal and the agent, but is solely a confirmation of who the agent and broker are representing and does not define the scope of the representation.

This bill requires a buyer-broker representation agreement to be executed between a buyer's agent and buyer as soon as practicable, but no later than the execution of the buyer's offer to purchase real property. This agreement is defined as a written contract between a buyer of real property and a buyer's agent by which the buyer's agent has been authorized by the buyer to provide specified services for or on behalf of the buyer for which a real estate license is required pursuant to the terms of the agreement. Recent amendments to the bill specify that the agreement is to contain, at a minimum, the terms related to compensation of the real estate broker, the services to be rendered, when compensation is due, and when the contract will terminate.

The bill makes it unlawful for a buyer-broker representation agreement to last longer than three months from the date the agreement was made, but exempts from this requirement buyer-broker representation agreements entered into between a real estate broker and a corporation, limited liability company, or partnership. Under the bill, the buyer's agent is required to provide specified disclosures to the buyer prior to the execution of a buyer-broker representation agreement, and specifies that a buyer-broker representation agreement that violates the terms described above is void and unenforceable.

4. Statements in support

The California Association of Realtors, sponsor of the bill, writes:

AB 2992 (Nguyen) is a consumer-friendly bill that will mandate that buyer broker agreements be used in residential real estate transactions in California. Buyer

broker agreements, which are now required in eighteen states (as of December 2023) are bilateral agreements that set out the rights and responsibilities of buyers and their agents.

The California Association of REALTORS®'s standard forms, which are used in most residential real estate transactions in California, have had buyer broker agreement forms available for optional use by agents for some time now. Practitioners who utilize such forms have found that having a clear explanation of the relationship is beneficial to both the agent and buyer and a growing number of brokers now encourage or require their agents to utilize them. Potential homebuyers are about to embark on one of the most significant financial transactions of their lives and that relationship deserves a written agreement which ensures that buyers will, just like sellers currently have, a clear understanding of their agency relationship.

AB 2992 also generally prohibits any buyer broker agreement from lasting more than three months from the date the agreement was made, with additional three-month renewals available. Finally, apart from creating the obligation for a written agency contract between the buyer's agent and the principal lasting no more than three months, which defines certain terms, nothing in this bill changes the statutory or common law obligations and duties of an agent to the principal (homebuyer or seller) that exist under current law.

### **SUPPORT**

California Association of Realtors (sponsor)

### **OPPOSITION**

None received

### **RELATED LEGISLATION**

Pending Legislation: None known.

Prior Legislation:

AB 1345 (Hart, Ch. 577, Stats. 2023) made it unlawful: (1) for an exclusive listing agreement regarding a single-family residential property to last longer than 24 months from the date the agreement was made, and (2) to present for recording or filing, or otherwise attempt to record or file, with a county recorder an exclusive listing agreement of any duration or any memoranda or notice of such an agreement.

**PRIOR VOTES**

Senate Business, Professions and Economic Development Committee (Ayes 10, Noes 0)

Assembly Floor (Ayes 71, Noes 0)

Assembly Appropriations Committee (Ayes 15, Noes 0)

Assembly Judiciary Committee (Ayes 11, Noes 0)

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