

# Consumer Protection Concerns Prompt Criteria for Buyer Representation Agreements

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The Consumer Federation of America has released its [proposed for criteria brokers can use to make sure new homebuyer representation contracts are fair](#).

The National Association of Realtors commission lawsuit settlement, scheduled to go into effect Aug. 17, requires Realtors to obtain buyer signatures on these contracts before home showings and before representing them in any manner.

“These criteria will assist regulators, consumer groups, and the industry itself to assess the fairness of new buyer agreements,” CFA senior fellow Stephen Brobeck said in a statement. “CFA has already shown that some revised contracts are very anti-consumer while others are much fairer to buyers.”

Earlier this year, the CFA examined 43 buyer-broker contracts from 37 states and found them to be lacking in consumer protections.

The group’s June 25 [report on the California Association of Realtors’ proposed buyer agreement](#), written by Tanya Monestier, a law professor at the University at Buffalo Faculty of Law, said the contract was “virtually unreadable” and “telegraphs how Realtors plan to circumvent the NAR Settlement.”

A similar CFA analysis of brokerage eXp’s [buyer-broker representation agreement](#) released on the same day called that document much more understandable and fair to buyers.

The CFA said it was encouraged to develop the criteria because of the requests it received from several real estate companies following the two reports' release asking the CFA to evaluate their new buyer contracts.

The CFA now proposes 15 criteria for evaluation, with four relating to the agreement's form (readability and understandability), and 11 relating to the contract's content (fairness to consumers).

"Understandable agreements have the ability to empower buyers and transform their relationship to agents," CFA's Brobeck said. "These contracts will reveal how buyer agents are compensated and how buyers can negotiate this compensation. In the past, fewer than half of buyers reported signing contracts, the contracts often did not explain buyer compensation, and they were signed relatively late in the sales process."

The content-related criteria according to the CFA includes the following guidelines, among others:

- Brokers have the right to terminate contracts at any time. Buyers should have the same right with no fees charged.
- The broker's fee should be clearly stated, always as a dollar figure or as an hourly rate.
- Buyer agents should not have a financial incentive to be paid more the higher the sale price.
- Any additional fees should always be deducted from the commission paid in a sale.
- Any seller concessions, including a willingness to help pay buyer agent compensation, should be approved by and paid to buyers not their brokers, then used by buyers as they see fit.
- There should be no limitations on buyer remedies. Buyer contracts should not include mandatory mediation or arbitration clauses.

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