

Real Estate Commission Agreements

California Law Requirements for Commission Agreements Between a Licensee and a Principal:

1. The agreement must be in writing if (i) it is for the sale or purchase of real property or (ii) a lease exceeding one year to be enforceable.
2. If the agreement is exclusive, it must contain a definite termination date.
3. If the property to be sold is residential real estate with four dwelling units or less, or a mobile home, then the agreement must also contain a notice about negotiability of commissions.

A Real Estate License is Required: It is unlawful for anyone to engage in the business of real estate without first obtaining a license. Further, only a broker may enter into a contract with a principal (although agents may sign such agreements on behalf of their broker). A real estate salesperson may only accept compensation through that salesperson's responsible broker.

Exclusive Agreements Must Have a Termination Date: Exclusive agreements must have a definite and final termination date. Although an exclusive agreement without a fixed termination date is not necessarily void, such an agreement exposes the licensee to discipline.

A Notice about Negotiability of Commissions is Required: Form agreements for the listing of residential property with four units or less are required to contain the following notice:

Notice: "The amount or rate of real estate commissions is not fixed by law. They are set by each broker individually and may be negotiable between the seller and broker."

Without this notice, a license might lose their right to claim a commission and may be disciplined.

Broker to Broker Compensation Agreements Need Not Be in Writing: Agreements between brokers do not have to be in writing but should be to avoid confusion. Use C.A.R. Form CBC or RFA to document the agreement. A California broker may pay a broker from another State.

Types of Compensation Agreements: Compensation agreements can be for a percentage or flat fee or a combination of both. Compensation may be for "full service" broker activity or specific services performed on a task by task basis. Compensation is payable after the services have been performed. While it is legally possible to obtain a fee in advance, any licensee who wants to do so must first have the compensation agreement for the advance fee pre-approved by the Department of Real Estate AND any advance fee collected must be held in a broker trust account until the fee has been earned.

For residential properties use the Exclusive, Non-Exclusive or Open listings agreements, (C.A.R. Forms RLA, RLAA, or RLAN) to document the relationship, or the Single Party Compensation Agreement (C.A.R. Form SP) to document the relationship with a seller. One of the Buyer Representation Agreements (Exclusive, Non-Exclusive or Non-exclusive, Not for Compensation – C.A.R. Forms BRE, BRNE or BRNN) may be used with a buyer. These forms are available to C.A.R. members within zipForm®.