

The loan broker listing agreement

Analyzing the loan broker's listing

The loan broker listing agreement has several sections. Each has a separate purpose and need for enforcement, explained as follows:

1. *Retainer commitments:* The employment is established (§1.1) to arrange a loan during a period of time terminating on a specific date. As in any employment, the broker will use diligence and the owner will cooperate to attain the objective sought of arranging the loan (§1.2). On initiating the employment, a deposit by the borrower may be negotiated to be applied toward the costs and fees itemized in the addendums (§1.3).
2. *Addendums to the agreement:* Information must be exchanged between the borrower and the broker for the broker to commence preparation of a loan submission package. The borrower will be asked to prepare and hand the broker information on himself and the property which will secure the loan (§§2a, c, d and e). The broker will prepare and submit disclosures of the proposed loan (§§2b, f, g, etc.).
3. *Brokerage fee:* Included is the statutory "price-fixing" notice mandated when four-or-less residential units are security for the loan. The fee the owner agrees to pay is either a fixed or formulated amount (§3.1). The fee is due on the acceptance by the owner of any loan arranged or negotiated by anyone (§3.1a), the withdrawal of the security (§3.1b), the premature termination of the agency (§3.1c), the acceptance of a loan from an identified prospective lender within a one year safety period after expiration/termination of the employment (§3.1d). An hourly fee is due should the loan sought not be available (§3.2).
4. *Terms of the loan sought:* The financial parameters of the loan sought must be agreed upon so it will be known when the broker has fully performed and is entitled to his fee. Included are the standard loan provisions encountered in the current market, closing arrangements and estimated expenses the borrower will incur to complete the loan transaction (§4.1). This section does not replace the loan disclosure (Regulation Z) statement needed on personal consumer loans. [See [first tuesday Form 327](#)]
5. *Property description:* Provisions to describe both real and personal property are provided (§§5 and 6). Often both are security for the loan (Unruh trust deeds). The property is identified, as is the condition of title such as vesting and encumbrances, and the ownership history and costs of acquisition and improvements.
6. *Personal property as collateral:* See comments under §5 above.

7. *General provisions:* Miscellaneous conditions ancillary to the employment are grouped into this section including the broker's authority to release confidential information regarding the owner, the owner's warranty regarding building permits, the broker's right to share the brokerage fee, attorney fees and the law governing the employment.

8. *Signatures and identification of the parties:* The owner and agent sign the agreement and date their signatures to bind the owner and the broker to the employment.

Preparing the loan broker listing

The numbers on the instructions correspond to the numbers for the provisions in the form.

Note — Check and enter items throughout the agreement in provisions with boxes and blanks, unless the provisions are not intended to be included as part of the final agreement.

Identification:

Enter the date and the place the listing is prepared. This is the date used to reference this document.

1. Retainer period:

1.1 *Date services start:* **Enter** the date the employment for brokerage services is to commence.

Date listing terminates: **Enter** the expiration date of the employment period. This must be a specific date since an exclusive listing is being established.

1.2 *Broker/agent's duty:* Under the listing, the broker promises to use diligence in his efforts to obtain the loan sought by the property owner. Likewise, the owner agrees to cooperate with the broker in a "good faith" effort to provide information and assistance requested by the broker to arrange the loan sought. These duties are always implied, if not expressed in writing.

1.3 *Advance fees and costs:* **Enter** the amount of deposit negotiated to commence the brokerage services. **Check** the box for each addendum to be attached, and **fill out** and **attach** the forms for the services to be rendered or costs to be incurred.

2. **Addendums:** **Check** the box for each addendum to be prepared or reviewed by the seller as part of the employment. The addendums listed will contain representations about the property which are needed by the broker to arrange the loan the property will secure.

3. Brokerage fee provision:

3.1 *Fee amount:* **Enter** the fee amount negotiated to be paid as either a percentage of the loan sought or a fixed dollar amount. This amount is due when any of the following conditions for payment occurs.

a. *Fee on loan obtained:* The brokerage fee is earned if the loan sought is obtained (full listing offer to lend) by the owner or any agent, or the owner accepts any loan to be secured by the property during the listing period.

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- b. *Fee on withdrawal*: The brokerage fee is earned and due if the owner, without the broker's consent, withdraws the property or makes its title unacceptable as security or significantly interferes with the broker's ability to obtain the loan sought.
- c. *Fee on termination*: If during the listing period the owner terminates the broker's agency, the fee has been earned and is due the broker.
- d. *Safety clause fee*: A loan brokerage fee is earned if, within one year after the listing expires, the owner agrees to a loan to be secured by the property and made by anyone with whom the broker negotiated during the listing period to arrange the loan sought by this agreement. The owner, within 21 days after expiration, is to be given a list of prospective lenders with whom the broker negotiated to arrange the loan sought.
- 3.2 *Hourly fee*: **Enter** the dollar amount for any per hour fee negotiated by the broker. The hourly fee entered is earned for time spent on behalf of the owner if a loan is not successfully arranged after a diligent effort is made.
- 4. Loan terms:**
- 4.1 *Loan sought*: **Enter** the loan amount to be made or arranged for the client.
- a. *Annual percentage rate*: **Enter** the interest rate which the owner is willing to pay. **Check** whether this rate will be fixed or variable. If variable, an explanation (disclosure) of the variable parameters is necessary so the borrower understands the effect on payments and that the interest rate may vary between a ceiling rate and a floor rate during the life of the loan. [See **first tuesday** Form 320]
- b. *Amortization period*: **Check** the monthly payment box if the repayment will be on a monthly schedule. If not, then **check** the next box and **enter** the period of payments (quarterly, semi-annually, etc.). **Enter** the amortization period which will be used to determine the amount of the periodic payments.
- c. *Final/balloon payment*: **Enter** the due date for payoff of the principal balance.
- d. *Delinquency fee*: **Enter** the amount of the late charge and length of the grace period before it is delinquent.
- e. *Prepayment bonus*: **Enter** the amount of the prepayment penalty. Several limitations exist on the amount of the penalty, the events which can trigger the penalty, all based on the type of real estate securing the loan.
- f. *Escrow*: **Enter** the name of the escrow company the owner agrees to use. Any escrow
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company can be named, including the broker's escrow department. If a broker-controlled independent escrow company is agreed upon, the control of the business by the broker must be disclosed, such as "Broker is an owner of this escrow company."

- g. *Title insurance*: **Enter** the name of the title company which will issue the coverage insuring the lender's trust deed loan.

5. Real estate securing the loan:

- 5.1 *Type*: **Enter** a brief description of the type of real estate offered as security (apartment, commercial, office, industrial or single family unit), its address, legal description or parcel number and the vesting.
- 5.2 *Priority of liens*: **Check** the box indicating whether the trust deed securing the loan being sought will be a first or a second in priority.
- 5.3 *Encumbrances of record*: **Enter** the balance, terms of payment and the lender on each trust deed of record.
- 5.4 *Property acquisition costs*: **Enter** the date the owner acquired the property and the price paid for the property. **Enter** the amount of cash the owner has invested in repairs and improvements.
- 5.5 *Property valuation*: **Enter** the current fair market value of the property based on the opinion of the owner, broker or an appraiser. **Enter** the amount of property taxes for the current year.

- 5.6 *Leases*: **Enter** information on any tenants and rental income. **Check** the box indicating the type of tenancy held by the occupants. Alternatively, **check** the box and prepare and **attach** a statement of the rent roll if the property consists of more than one rental unit. [See [first tuesday Form 350](#)]

6. Personal property included:

- 6.1 *Description*: **Enter** a brief description of any personal property which is to be additional security. If numerous inventory or specific items are included as security for the loan, **prepare** and **attach** an exhibit for inventory/personal property and refer to it by **entering** "See Personal Property Exhibit." [See [first tuesday Form 250](#)]
- 6.2 *Encumbrances*: **Enter** the balance of any financing secured by the personal property, the amount of monthly payments, the interest rate, due date and the lender's name.

7. General provisions:

- 7.1 *Authority to disclose financial information*: Allows release by the broker to prospective lenders of all credit information on the owner.
- 7.2 *Warranty of property conditions*: Owner represents to the broker that all permits have been obtained for improvements on the property. **Check** the box if a Condition of Property Statement is attached.
- 7.3 *Authority to share fees*: Broker is authorized to work with other brokers and share with them any fee paid on any transaction.

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- 7.4 *Attorney fees:* If litigation results from the owner's failure to pay fees or the broker's breach of an agency duty, the prevailing party is entitled to his attorney fees.
- 7.5 *Choice-of-law provision:* California law will apply to any enforcement of the employment.
- 7.6 *Additional provisions:* Enter any additional provisions agreed to between the loan broker and the owner.

8. Signatures:

Broker's signature: **Enter** the date signed, broker's name, address, telephone and fax number and his email address. **Obtain** the agent's signature on behalf of the broker.

Owner's signature: **Enter** the date owner signs, the owner's name, address, telephone and fax number and his email address. **Obtain** the owner's signature.