

CAR Agent Commission Sharing Agreement

In December, 2016, CAR published a new form entitled “Agent Commission Sharing Agreement”. Quite often, agents share business without a written agreement. This is problematical as there is no formal agreement as to how these clients will be handled and how things will be handled upon termination of the agents’ sharing of clients. It is highly recommended that all agents who share business and/or clients have a written agreement delineating the various issues involved in such sharing.

The “Agent Commission Sharing Agreement” was developed with this in mind. This agreement includes a section which covers the Scope of the Commission Sharing (all client, geographical farm area, all but family members, etc). It also has a section which sets forth any Preexisting Client Relationships that might be excluded from the Commission Sharing Agreement. There is a Compensation paragraph that allows the agents the flexibility to customize the Compensation arrangement. In addition, there is a Shared Expenses paragraph dealing with how expenses are to be apportioned among the agents. A paragraph covers the use of Fictitious Business Names and Team Names among the Agents. And perhaps most importantly, there is a paragraph discussing Compensation and other Rights and Obligations upon Termination of the Commission Sharing Agreement. The form also has a Dispute Resolution paragraph which sets forth the options to resolve a dispute should a dispute develop amongst the agents.

This form can be found in the zipforms library. It is highly recommended that agents sharing commission use this form or a similar form covering the various aspects involved in a Commission Sharing arrangement.

A sample of the CAR “Agent Commission Sharing Agreement” is attached to this article for your reference.



AGENT COMMISSION SHARING AGREEMENT

(Between Associate-Licensees) (C.A.R. Form ACS, 12/16)

This Agent Commission Sharing Agreement is made between the following parties:

_____ ("Associate-Licensee 1" or "AL1"), CalBRE Lic # _____ and _____ ("Associate-Licensee 2" or "AL2"), CalBRE Lic # _____.

In consideration of the covenants and representations contained in this Agreement, AL1 and AL2 agree as follows:

1. TERM OF AGREEMENT:

A. Commencement Date: The term of this Agreement begins on _____ (Date) or if no date is specified, the Agreement begins on the date of the last AL signature below, if there is only one Broker, or the last Broker signature if two Brokers ("Commencement Date").

B. Expiration Date: The Agreement shall continue uninterrupted until ("Expiration Date")

(i) Ongoing: Terminated by either party as specified below;

OR (ii) Fixed Term: Twelve (12) or ___ months from the Commencement Date or _____ (Date) or earlier if terminated by either Party as specified below. In the absence of written termination by either party, the Agreement shall continue for successive periods of equal duration or _____ this Agreement shall automatically terminate on the Expiration Date.

(iii) Termination Notice: Whether ongoing or fixed term, either party may terminate this Agreement before the Expiration Date by giving at least 30 or _____ days' written notice to the other;

OR (iv) Completion of a transaction as further described as follows: _____

(v) Licensing Requirement: Both AL1 and AL2 must remain licensed during the term of this Agreement. Regardless of the duration of the Agreement as specified in 1B(i) - (iv) above, this Agreement shall terminate immediately if the real estate license of either AL is revoked, suspended, or forfeited or if either AL no longer conducts licensed activity through Broker identified in paragraph 15. Each party has an affirmative obligation to immediately notify the other if an AL's license is suspended, revoked or forfeited or if the AL no longer conducts licensed activity through the Broker identified in paragraph 15.

2. SCOPE OF AGREEMENT/COVERED TRANSACTION: ("Covered Transaction", means either All Activity as defined in 2A or Limited Activity as defined in 2B)

A. All Activity: This Agreement shall apply to all transactions entered into during its term for which either AL is entitled to Compensation, except transactions involving:

- (i) AL's own property
(ii) family members of either AL
(iii) the following named persons or entities: _____

(iv) commercial, residential income (exceeding 4 units), business opportunities, agricultural, vacant land, lease/rentals, outgoing referrals

(v) property in the geographical (farm) area described in the attached addendum

(vi) other: _____

B. Limited Activity: This Agreement only applies to the following:

- (i) transactions in the community/city of _____
(ii) the property specifically identified as _____
(iii) transactions involving the following named persons or entities: _____

(iv) property in the geographical (farm) area described in the attached addendum

(v) other: _____

3. PREEXISTING CLIENT RELATIONSHIPS:

A. Attached as Exhibit 1 is a list of all clients that have a relationship with AL1 prior to the Commencement Date.

B. Attached as Exhibit 2 is a list of all clients that have a relationship with AL2 prior to the Commencement Date.

C. Both AL1 and AL2 agree that these lists, if any, represent the complete identification of any clients brought into this Commission Sharing Agreement for all purposes of this Agreement ("Preexisting Clients").

Associate Licensee 1 Initials (_____)

Associate Licensee 2 Initials (_____)



4. **COMPENSATION:** Gross Compensation earned under a Covered Transaction by either AL, shall be split between AL1 and AL2 as follows and then paid by Broker subject to each AL split with Broker:
- A. **Preexisting Clients:** For all Covered Transactions with Preexisting Clients, 50% of the Compensation to AL1 and 50% of the Compensation to AL2 or the AL who identified the Preexisting Client pursuant to paragraph 3 shall be paid _____% of the Compensation and _____% of the Compensation to the other AL.
 - B. **Shared Clients:** For all Covered Transactions with Shared Clients, 50% of the Compensation to AL1 and 50% of the Compensation to AL2 or _____% of the Compensation to AL1 and _____% of the Compensation to AL2.
 - C. Other: Per attached addendum _____
 - D. **Broker Instructions:** Both AL1 and AL2 hereby instruct Broker to pay them according to this Agreement. Both AL1 and AL2 acknowledge that Broker shall have the right but not the obligation to withhold total Compensation if there is a dispute between Associate-Licensees.
5. **SHARED EXPENSES:**
- A. ALs agree that, except as otherwise specified, all expenses incurred by either AL in connection with activity intending to result in a Covered Transaction shall be split using the same ratio as that specified for Compensation in paragraph 4.
 - B. By the 10th (or _____) day of each month, or quarterly or within 10 (or _____) days after the closing of each transaction, each AL shall submit to the other a written statement, with copies of receipts, identifying all shared expenses incurred by that AL. Within 10 (or _____) days thereafter, an accounting and reconciliation shall be conducted to determine whether one AL owes the other AL for expenses based on the formula specified herein. Within 10 (or _____) days thereafter payment shall be made.
 - C. Broker shall not be responsible for allocating expenses for any expenses deducted by Broker pursuant to Broker's written agreement with either AL or office policy.
 - D. Each AL shall be solely responsible for the costs of (i) obtaining, maintaining and keeping current that AL's real estate license; (ii) MLS fees; (iii) AOR dues; (iv) Agent charges from Broker and (v) _____
 - E. **Transaction Coordinators:** If either AL currently makes use of or hereafter hires the services of a transaction coordinator or personal assistant ("TC"), then that AL shall have a written agreement with the TC, such as C.A.R. Form Personal Assistant Contract (C.A.R. form PAC). The AL who has the written agreement with a TC is solely responsible for compliance with all labor or employment laws that apply. If the TC performs activities for both ALs, the payment to the TC shall be split equally between both ALs or in the same proportion as their Compensation split. If the TC performs activities for only one AL, then the payment to the TC shall be paid by that AL or both ALs in the same proportion as their Compensation split or other: _____. The costs and the expenses associated with the TC, other than payment, shall be subject to this paragraph.
6. **BUSINESS IDENTITY:**
- A. **SALESPERSON OWNED FICTITIOUS BUSINESS NAMES:** AL1 and AL2 agree that they each may (will) conduct any and all licensed activity under the name of _____ ("DBA") which, if applicable, is the fictitious business name already used and owned by AL1, AL2, both or which will be owned by AL1, AL2, both. If the DBA has not already been created, all costs and expenses of creating and maintaining the DBA shall be borne by AL1, AL2 or both ALs in the same proportion as their Compensation split. All advertising and marketing under the DBA shall comply with applicable laws. Upon termination of this Agreement, the AL who owns the DBA shall (shall not) have the right to continue to use the DBA.
 - B. **TEAM NAMES:** AL1 and AL2 agree that they each may (will) conduct any and all licensed activity under the name of _____, which, if applicable, is the team name already used by AL1, AL2. No other team name will be used without the written consent of both ALs. All advertising and marketing under the team name shall comply with applicable laws.
7. **COMPENSATION AND OTHER RIGHTS AND OBLIGATIONS UPON TERMINATION:**
- A. **Pending Transactions or Business:** For Covered Transactions resulting from a then-existing open escrow, or referral fee agreement, or contract for which escrow has not yet been opened, or Listing or buyer representation agreement, ALs shall be paid (i) as if the Agreement had not been terminated or (ii) as follows: _____.
 - B. **Future Transactions With Preexisting Clients:** If after termination of this Agreement, the client chooses to work with the AL who identified the Preexisting Client pursuant to paragraph 3, the other AL shall not be entitled to any Compensation from the Future Transaction. If after termination of this Agreement, the client chooses to work with the AL who did not identify the Preexisting Client pursuant to paragraph 3, then for any Future Transaction entered into by the Preexisting Client with the other AL within 12 or _____ months from the date of termination, the AL who identified the Preexisting Client shall (shall not) be entitled to a referral fee of _____% of the Compensation earned by chosen AL based on the principal's side of the transaction or _____.
 - C. **Future Transactions With Shared Clients:** (i) Regardless of which AL the Shared Client chooses to work with, the other AL shall be entitled to a referral fee of _____% of the Compensation earned by the chosen AL based on the principal's side for any Future Transaction entered into by the Shared Client with the other AL within 3 (or _____) months from the date of termination, or _____. (ii) Each AL shall maintain a list of Shared Clients and provide the list to the other periodically during the term of this Agreement.

Associate Licensee 1 Initials (_____)

Associate Licensee 2 Initials (_____)



- D. **Expenses:** For all expenses incurred for a Covered Transaction covered under this paragraph, both ALs agree to abide by the provisions of paragraph 5.
- E. **DBAs and Team Names:** All names, logos, trademarks, and like material concerning a DBA or team name remain the property of the AL who owns the DBA or team name.
- F. **New Broker:** If either AL leaves the Broker identified in paragraph 15 and conducts licensed activity under a different Broker ("New Broker") and thereafter either AL conducts licensed activity which could result in Compensation being owed pursuant to this paragraph, that AL agrees to provide a referral fee agreement (such as C.A.R. form RFA) to that AL's then existing Broker providing for a referral fee to the other AL's Broker covering that principal or transaction.
- G. Preexisting Client lists provided by either AL pursuant to this Agreement are trade secrets that cannot be used by the other AL after termination of this Agreement.

8. INDEPENDENT CONTRACTOR RELATIONSHIP:

Associate-Licensees intend that this Agreement does not constitute an employment agreement by either party or a partnership agreement between them nor does it alter or modify each AL's status as an independent contractor or otherwise with Broker.

- 9. DISPUTE RESOLUTION:** During or after the term of this Agreement, ALs agree to resolve disputes between them as follows: If ALs cannot resolve a dispute between themselves, they agree to seek the assistance of Broker in accordance with Broker's dispute resolution policy. If Broker does not have a policy governing disputes between associate-licensees conducting business under the Broker's license, or is unwilling or unable to resolve the dispute, ALs agree to submit the dispute to mediation. Mediation may be conducted at a local Association of REALTORS® to which both AL belongs or through the C.A.R. Real Estate Mediation Center for Consumers or any another neutral third party mutually agreed to by ALs. ALs agree to share the cost of mediation equally. If any dispute or claim is not resolved through mediation, or otherwise, ALs (i) may mutually agree to submit disputes to binding arbitration by the procedures and rules set forth in the California Code of Ethics and Arbitration Manual and (ii) if initialed by both ALs (AL1, AL2) the ALs agree to resolve disputes by neutral, binding arbitration. Associate-Licensees agree to timely notify the other and mediate all disputes and claims between them arising from or connected in any way with this Agreement before resorting to arbitration or court action. Associate-Licensees agree that all proceedings before Broker, a mediator or arbitrator will remain confidential between the parties, including but not limited to any depositions, discovery, pleadings, exhibits, testimony, or award. The confidentiality will not apply to any court proceeding in which either party seeks to confirm, correct, or vacate an arbitration award.

- 10. ADDITIONAL AGENT ACKNOWLEDGEMENT:** AL1 and AL2 each agree to use an additional agent acknowledgement (C.A.R. Form AAA) or, if different Brokers for AL1 and AL2, each agree to use an additional Broker acknowledgement (C.A.R. Form ABA) for any transaction to which this Agreement applies.

11. ADDITIONAL PROVISIONS:

12. DEFINITIONS: As used in this Agreement, the following terms have the meanings indicated:

- A. "AL" means either Associate Licensee as specified in this Agreement.
- B. "Compensation" means compensation for acts requiring a real estate license, regardless of whether calculated as a percentage of transaction price, flat fee, hourly rate, or in any other manner.
- C. "Future Transaction" means any transaction involving either AL and any Preexisting Client or Shared Client, where a contract has been entered into by that client.
- D. "Listing" means an agreement with a party to locate a buyer, exchange party, lessee, or other party to a transaction involving real property, a manufactured home, or any other property or other transaction which may be brokered by a real estate licensee; or an agreement with a party to locate or negotiate for any such property or Transaction.
- E. "Shared Client" means any client identified in 7C(ii) and clients with listings, buyer representation agreements, referrals, and closed transactions during the term of this Agreement, other than a person or entity defined as a Preexisting Client pursuant to paragraph 3.
- F. "Transaction" means a sale, exchange, lease, rental or outbound referral of real property, a business opportunity, or a manufactured home, which may lawfully be brokered by a real estate licensee.

- 13. ATTORNEY FEES:** In any action, proceeding, or arbitration between Associate-Licensees arising from or related to this Agreement, the prevailing ALs shall be entitled to reasonable attorney fees and costs.

Associate Licensee 1 Initials (_____)

Associate Licensee 2 Initials (_____)



14. ENTIRE AGREEMENT: All prior agreements between the ALs concerning their relationship are incorporated in this Agreement, which constitutes the entire Agreement. Its terms are intended by the parties as a final and complete expression of their agreement with respect to its subject matter, and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. This Agreement may not be amended except by further agreement in writing executed by both ALs.

15. A. RESPONSIBLE BROKER: AL1 conducts licensed activity through the following brokerage company, _____
"Broker", CalBRE Lic # _____
AL2 conducts licensed activity through the following brokerage company, _____
"Broker", CalBRE Lic # _____

B. SAME BROKER: A copy of this Agreement will be provided to Broker through whom both ALs conduct licensed activity. Any signature by Broker on this Agreement is for the purpose of acknowledging receipt of this Agreement and does not make, nor is intended to make, Broker a party to this Agreement.

C. DIFFERENT BROKER(S): If AL1 and AL2 each conduct licensed activity through different brokerage firms, then this Agreement has no effect unless each brokerage firm consents.

Associate-Licensee 1:

(Signature)

(Print name)

(Address) (City, State, Zip)

(Telephone) (Fax)

Associate-Licensee 2:

(Signature)

(Print name)

(Address) (City, State, Zip)

(Telephone) (Fax)

BROKERS:

SAME BROKER for both AL1 and AL2: Broker acknowledges receipt of this Agent Commission Sharing Agreement.
Broker: _____ By _____ Date: _____
(Brokerage Firm Name) Its Broker Office Manager (check one)

DIFFERENT BROKERS for AL1 and AL2: Each Broker signing below acknowledges receipt of and consents to this Agent Commission Sharing Agreement, and, if applicable, subject to the attached Addendum.

Subject to the attached addendum
Broker for AL1: _____ By _____ Date: _____
(Brokerage Firm Name) Its Broker Office Manager (check one)

Subject to the attached addendum
Broker for AL2: _____ By _____ Date: _____
(Brokerage Firm Name) Its Broker Office Manager (check one)

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Reviewed by _____

