



EXCLUSIVE AUTHORIZATION TO ACQUIRE PROPERTY BUYER BROKER COMPENSATION CONTRACT (C.A.R. Form AAP, Revised 4/02)

1. EXCLUSIVE RIGHT TO REPRESENT: _____ ("Buyer") grants _____ ("Broker") beginning on (date) _____ and ending at (i) 11:59 p.m. on (date) _____ or (ii) completion of a resulting transaction, whichever occurs first ("Representation Period"), the exclusive and irrevocable right, on the terms specified in this Agreement, to represent Buyer in acquiring real property or a manufactured home. Broker agrees to exercise due diligence and reasonable efforts to fulfill the following authorizations and obligations. Broker will perform its obligations under this Agreement through the individual signing for Broker below, who is either Broker individually or an associate-licensuree (an individual licensed as a real estate salesperson or broker who works under Broker's real estate license). Buyer agrees that Broker's duties are limited by the terms of this Agreement, including those limitations set forth in paragraphs 5 and 6.

2. AGENCY RELATIONSHIPS:

A. DISCLOSURE: If the property described in paragraph 4 includes residential property with one-to-four dwelling units, Buyer acknowledges receipt of the "Disclosure Regarding Real Estate Agency Relationships" form prior to entering into this Agreement.

B. BUYER REPRESENTATION: Broker will represent, as described in this Agreement, Buyer in any resulting transaction.

C. (1) POSSIBLE DUAL AGENCY WITH SELLER: (C(1) APPLIES UNLESS C(2)(i) or (ii) is checked below.)

Depending on the circumstances, it may be necessary or appropriate for Broker to act as an agent for both Buyer and a seller, exchange party, or one or more additional parties ("Seller"). Broker shall, as soon as practicable, disclose to Buyer any election to act as a dual agent representing both Buyer and Seller. If Buyer is shown property listed with Broker, Buyer consents to Broker becoming a dual agent representing both Buyer and Seller with respect to those properties. In event of dual agency, Buyer agrees that: (a) Broker, without the prior written consent of Buyer, will not disclose to Seller that Buyer is willing to pay a price greater than the price offered; (b) Broker, without the prior written consent of Seller, will not disclose to Buyer that Seller is willing to sell property at a price less than the listing price; and (c) other than as set forth in (a) and (b) above, a dual agent is obligated to disclose known facts materially affecting the value or desirability of the Property to both parties.

OR (2) SINGLE AGENCY ONLY: (APPLIES ONLY IF (i) or (ii) is checked below.)

[] (i) Broker's firm lists properties for sale: Buyer understands that this election will prevent Broker from showing Buyer those properties that are listed with Broker's firm or from representing Buyer in connection with those properties. Buyer's acquisition of a property listed with Broker's firm shall not affect Broker's right to be compensated under paragraph 3. In any resulting transaction in which Seller's property is not listed with Broker's firm, Broker will be the exclusive agent of Buyer and not a dual agent also representing Seller.

OR [] (ii) Broker's firm DOES NOT list property: Entire brokerage firm only represents buyers and does not list property. In any resulting transaction, Broker will be the exclusive agent of Buyer and not a dual agent also representing Seller.

D. OTHER POTENTIAL BUYERS: Buyer understands that other potential buyers may, through Broker, consider, make offers on or acquire the same or similar properties as those Buyer is seeking to acquire. Buyer consents to Broker's representation of such other potential buyers before, during and after the Representation Period, or any extension thereof.

E. CONFIRMATION: If the Property includes residential property with one-to-four dwelling units, Broker shall confirm the agency relationship described above, or as modified, in writing, prior to or coincident with Buyer's execution of a Property Contract.

3. COMPENSATION TO BROKER:

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 Buyer and Broker (real estate commissions include all compensation and fees to Broker).

Buyer agrees to pay to Broker, irrespective of agency relationship(s), as follows:

A. AMOUNT OF COMPENSATION: (Check (1), (2) or (3). Check only one.)

[] (1) _____ percent of the acquisition price AND (if checked [] \$ _____.

OR [] (2) \$ _____.

OR [] (3) Pursuant to the compensation schedule attached as an addendum _____.

B. BROKER RIGHT TO COMPENSATION: Broker shall be entitled to the compensation provided for in paragraph 3A:

(1) If Buyer enters into an agreement to acquire property described in paragraph 4, on those terms or any other terms acceptable to Buyer during the Representation Period, or any extension thereof.

(2) If, within _____ calendar days after expiration of the Representation Period or any extension thereof, Buyer enters into an agreement to acquire property described in paragraph 4, which property Broker introduced to Buyer, or for which Broker acted on Buyer's behalf. The obligation to pay compensation pursuant to this paragraph shall arise only if, prior to or within 3 (or [] _____) calendar days after expiration of this Agreement or any extension thereof, Broker gives Buyer a written notice of those properties which Broker introduced to Buyer, or for which Broker acted on Buyer's behalf.

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Buyer and Broker acknowledge receipt of a copy of this page.

Buyer's Initials (____) (____)

Broker's Initials (____) (____)



Reviewed by Broker or Designee _____ Date _____

- C. **PAYMENT OF COMPENSATION:** Compensation is payable:
 - (1) Upon completion of any resulting transaction, and if an escrow is used, through escrow.
 - (2) If acquisition is prevented by default of Buyer, upon Buyer's default.
 - (3) If acquisition is prevented by a party to the transaction other than Buyer, when Buyer collects damages by suit, settlement or otherwise. Compensation shall equal one-half of the damages recovered, not to exceed the compensation provided for in paragraph 3A, after first deducting the unreimbursed expenses of collection, if any.
- D. **BUYER OBLIGATION TO PAY COMPENSATION:** Buyer is responsible for payment of compensation provided for in this Agreement. **However, if anyone other than Buyer compensates Broker for services covered by this Agreement, that amount shall be credited toward Buyer's obligation to pay compensation.** If the amount of compensation Broker receives from anyone other than Buyer exceeds Buyer's obligation, the excess amount shall be disclosed to Buyer and if allowed by law paid to Broker, or (if checked) credited to Buyer or other _____.
- E. Buyer hereby irrevocably assigns to Broker the compensation provided for in paragraph 3A from Buyer's funds and proceeds in escrow. Buyer agrees to submit to escrow any funds needed to compensate Broker under this Agreement. Broker may submit this Agreement, as instructions to compensate Broker, to any escrow regarding Property involving Buyer and a seller or other transferor.
- F. **"BUYER"** includes any person or entity, other than Broker, related to Buyer or who in any manner acts on Buyer's behalf to acquire property which satisfies the conditions set forth in paragraph 4.
- G. (1) Buyer has not previously entered into a representation agreement with another brokerage firm regarding property described in paragraph 4, unless specified as follows (name other brokerage firm here): _____
 (2) Buyer warrants that Buyer has no obligation to pay compensation to any other brokerage firm regarding property described in paragraph 4, unless Buyer acquires the following property(ies): _____
 (3) If Buyer acquires a property specified in G(2) above during the time Buyer is obligated to compensate another broker, Broker is neither (i) entitled to compensation under this Agreement nor (ii) obligated to represent Buyer in such transaction.

4. **PROPERTY TO BE ACQUIRED:**
 Any purchase, lease or other acquisition of any real property or manufactured home described as follows:

Price range: \$ _____ to \$ _____

- 5. **BROKER AUTHORIZATIONS AND OBLIGATIONS:**
 - A. Buyer authorizes Broker to: (i) locate and present selected properties to Buyer, present offers authorized by Buyer, and assist Buyer in negotiating for acceptance of such offers; (ii) assist Buyer with the financing process, including obtaining loan pre-qualification; (iii) upon request, provide Buyer with a list of professionals or vendors who perform the services described in the attached Buyer's Inspection Advisory; (iv) order reports, and schedule and attend meetings and appointments with professionals chosen by Buyer; (v) provide guidance to help Buyer with the acquisition of property; and (vi) obtain a credit report on Buyer.
 - B. For property transactions of which Broker is aware and not precluded from participating in by Buyer, Broker shall provide and review forms to create a property contract ("Property Contract") for the acquisition of a specific property ("Property"). With respect to such Property, Broker shall: (i) if the Property contains residential property with one-to-four dwelling units, conduct a reasonably competent and diligent on-site visual inspection of the accessible areas of the Property (excluding any common areas), and disclose to Buyer all facts materially affecting the value or desirability of such Property that are revealed by this inspection; (ii) deliver or communicate to Buyer any disclosures, materials or information received by, in the personal possession of or personally known to the individual signing for Broker below during the Representation Period; and (iii) facilitate the escrow process, including assisting Buyer in negotiating with Seller. Unless otherwise specified in writing, any information provided through Broker in the course of representing Buyer has not been and will not be verified by Broker. Broker's services are performed in compliance with federal, state and local anti-discrimination laws.

- 6. **SCOPE OF BROKER DUTY:**
 - A. While Broker will perform the duties described in paragraph 5B, Broker recommends that Buyer select other professionals, as described in the attached Buyer's Inspection Advisory, to investigate the Property through inspections, investigations, tests, surveys, reports, studies and other available information ("Inspections") during the transaction. Buyer agrees that these Inspections, to the extent they exceed the obligations described in paragraph 5B, are not within the scope of Broker's agency duties. Broker informs Buyer that it is in Buyer's best interest to obtain such Inspections.
 - B. Buyer acknowledges and agrees that Broker: (i) does not decide what price Buyer should pay or Seller should accept; (ii) does not guarantee the condition of the Property; (iii) does not guarantee the performance, adequacy or completeness of Inspections, services, products or repairs provided or made by Seller or others to Buyer or Seller; (iv) shall not be responsible for identifying defects that are not known to Broker and either (a) are not visually observable in reasonably accessible areas of the Property or (b) are in common areas; (v) shall not be responsible for identifying the location of boundary lines or other items affecting title; (vi) shall not be responsible for verifying square footage, representations of others or information contained in Inspection reports; (vii) shall not be responsible for providing legal or tax advice regarding any aspect of a transaction entered into by Buyer in the course of this representation; and (viii) shall not be responsible for providing other advice or information that exceeds the knowledge, education and experience required to perform real estate licensed activities. Buyer agrees to seek legal, tax, insurance, title and other desired assistance from appropriate professionals.

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Buyer and Broker acknowledge receipt of a copy of this page.

Buyer's Initials (_____) (_____) _____

Broker's Initials (_____) (_____) _____



Reviewed by
 Broker or Designee _____ Date _____

Buyer: _____ Date: _____

- C. Broker owes no duty to inspect for common environmental hazards, earthquake weaknesses, or geologic and seismic hazards. If Buyer receives the booklets titled "Environmental Hazards: A Guide for Homeowners, Buyers, Landlords and Tenants," "The Homeowner's Guide to Earthquake Safety," or "The Commercial Property Owner's Guide to Earthquake Safety," the booklets are deemed adequate to inform Buyer regarding the information contained in the booklets and, other than as specified in 5B above, Broker is not required to provide Buyer with additional information about the matters described in the booklets.

7. BUYER OBLIGATIONS:

- A. Buyer agrees to timely view and consider properties selected by Broker and to negotiate in good faith to acquire a property. Buyer further agrees to act in good faith toward the completion of any Property Contract entered into in furtherance of this Agreement. Within **5 (or _____) calendar days** from the execution of this Agreement, Buyer shall provide relevant personal and financial information to Broker to assure Buyer's ability to acquire property described in paragraph 4. If Buyer fails to provide such information, or if Buyer does not qualify financially to acquire property described in paragraph 4, then Broker may cancel this Agreement in writing. Buyer has an affirmative duty to take steps to protect him/herself, including discovery of the legal, practical and technical implications of discovered or disclosed facts, and investigation of information and facts which are known to Buyer or are within the diligent attention and observation of Buyer. Buyer is obligated to and agrees to read all documents provided to Buyer. Buyer agrees to seek desired assistance from appropriate professionals, selected by Buyer, such as those referenced in the attached Buyer's Inspection Advisory.
- B. Buyer shall notify Broker in writing of any material issue to Buyer, such as, but not limited to, Buyer requests for information on, or concerns regarding, any particular area of interest or importance to Buyer ("Material Consideration").
- C. **Buyer agrees to (i) indemnify, defend and hold Broker harmless from all claims, disputes, litigation, judgments, costs and attorney fees arising from any incorrect information supplied by Buyer, or from any Material Consideration that Buyer fails to disclose in writing to Broker, and (ii) pay for reports, inspections and meetings arranged by Broker on Buyer's behalf.**
- D. Buyer is advised to read the attached Buyer's Inspection Advisory for a list of items and other concerns that typically warrant inspections or investigation by Buyer or other professionals.

8. DISPUTE RESOLUTION:

- A. **MEDIATION:** Buyer and Broker agree to mediate any dispute or claim arising between them out of this Agreement, or any resulting transaction, before resorting to arbitration or court action, subject to paragraph 8B(2) below. Paragraph 8B(2) below applies whether or not the arbitration provision is initialed. Mediation fees, if any, shall be divided equally among the parties involved. If, for any dispute or claim to which this paragraph applies, any party commences an action without first attempting to resolve the matter through mediation, or refuses to mediate after a request has been made, then that party shall not be entitled to recover attorney fees even if they would otherwise be available to that party in any such action. THIS MEDIATION PROVISION APPLIES WHETHER OR NOT THE ARBITRATION PROVISION IS INITIALED.

- B. **ARBITRATION OF DISPUTES: (1) Buyer and Broker agree that any dispute or claim in law or equity arising between them regarding the obligation to pay compensation under this Agreement, which is not settled through mediation, shall be decided by neutral, binding arbitration, including and subject to paragraph 8B(2) below. The arbitrator shall be a retired judge or justice, or an attorney with at least five years of residential real estate law experience, unless the parties mutually agree to a different arbitrator, who shall render an award in accordance with substantive California law. In all other respects, the arbitration shall be conducted in accordance with Part III, Title 9 of the California Code of Civil Procedure. Judgment upon the award of the arbitrator(s) may be entered in any court having jurisdiction. The parties shall have the right to discovery in accordance with Code of Civil Procedure §1283.05.**

(2) EXCLUSIONS FROM MEDIATION AND ARBITRATION: The following matters are excluded from mediation and arbitration hereunder: (i) a judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage, or installment land sale contract as defined in Civil Code §2985; (ii) an unlawful detainer action; (iii) the filing or enforcement of a mechanic's lien; (iv) any matter that is within the jurisdiction of a probate, small claims, or bankruptcy court; and (v) an action for bodily injury or wrongful death, or for any right of action to which Code of Civil Procedure §337.1 or §337.15 applies. The filing of a court action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, shall not constitute a waiver of the mediation and arbitration provisions.

"NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY."

"WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION TO NEUTRAL ARBITRATION."

Buyer's Initials _____ / _____ Broker's Initials _____ / _____

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Buyer and Broker acknowledge receipt of a copy of this page.

Buyer's Initials (_____) (_____)

Broker's Initials (_____) (_____)



Reviewed by
Broker or Designee _____ Date _____

Buyer: _____ Date: _____

9. **TIME TO BRING LEGAL ACTION:** Legal action for breach of this Agreement, or any obligation arising therefrom, shall be brought no more than two years from the expiration of the Representation Period or from the date such cause of action may arise, whichever occurs first.

10. **OTHER TERMS AND CONDITIONS,** including ATTACHED SUPPLEMENTS: Buyer's Inspection Advisory (C.A.R. Form BIA-11)

11. **ATTORNEY FEES:** In any action, proceeding or arbitration between Buyer and Broker regarding the obligation to pay compensation under this Agreement, the prevailing Buyer or Broker shall be entitled to reasonable attorney fees and costs, except as provided in paragraph 8A.

12. **ENTIRE CONTRACT:** All understandings between the parties are incorporated in this Agreement. Its terms are intended by the parties as a final, complete and exclusive 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 extended, amended, modified, altered or changed, except in writing signed by Buyer and Broker. In the event that any provision of this Agreement is held to be ineffective or invalid, the remaining provisions will nevertheless be given full force and effect. This Agreement and any supplement, addendum or modification, including any copy, whether by copier, facsimile, NCR or electronic, may be signed in two or more counterparts, all of which shall constitute one and the same writing.

Buyer acknowledges that Buyer has read, understands, accepts and has received a copy of this Agreement.

Buyer _____ Date _____

Address _____ City _____ State _____ Zip _____

Telephone _____ Fax _____ E-mail _____

Buyer _____ Date _____

Address _____ City _____ State _____ Zip _____

Telephone _____ Fax _____ E-mail _____

Real Estate Broker (Firm) _____


By (Agent) _____ Date _____

Address _____ City _____ State _____ Zip _____

Telephone _____ Fax _____ E-mail _____

THIS FORM HAS BEEN APPROVED BY THE CALIFORNIA ASSOCIATION OF REALTORS® (C.A.R.). NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY OR ADEQUACY OF ANY PROVISION IN ANY SPECIFIC TRANSACTION. A REAL ESTATE BROKER IS THE PERSON QUALIFIED TO ADVISE ON REAL ESTATE TRANSACTIONS. IF YOU DESIRE LEGAL OR TAX ADVICE, CONSULT AN APPROPRIATE PROFESSIONAL.

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Reviewed by _____ Date _____
Broker or Designee _____





BUYER'S INSPECTION ADVISORY

(C.A.R. Form BIA, Revised 10/02)

A. IMPORTANCE OF PROPERTY INVESTIGATION: The physical condition of the land and improvements being purchased is not guaranteed by either Seller or Brokers. For this reason, you should conduct thorough investigations of the Property personally and with professionals who should provide written reports of their investigations. A general physical inspection typically does not cover all aspects of the Property nor items affecting the Property that are not physically located on the Property. If the professionals recommend further investigations, including a recommendation by a pest control operator to inspect inaccessible areas of the Property, you should contact qualified experts to conduct such additional investigations.

B. BUYER RIGHTS AND DUTIES: You have an affirmative duty to exercise reasonable care to protect yourself, including discovery of the legal, practical and technical implications of disclosed facts, and the investigation and verification of information and facts that you know or that are within your diligent attention and observation. The purchase agreement gives you the right to investigate the Property. If you exercise this right, and you should, you must do so in accordance with the terms of that agreement. This is the best way for you to protect yourself. It is extremely important for you to read all written reports provided by professionals and to discuss the results of inspections with the professional who conducted the inspection. You have the right to request that Seller make repairs, corrections or take other action based upon items discovered in your investigations or disclosed by Seller. If Seller is unwilling or unable to satisfy your requests, or you do not want to purchase the Property in its disclosed and discovered condition, you have the right to cancel the agreement if you act within specific time periods. If you do not cancel the agreement in a timely and proper manner, you may be in breach of contract.

C. SELLER RIGHTS AND DUTIES: Seller is required to disclose to you material facts known to him/her that affect the value or desirability of the Property. However, Seller may not be aware of some Property defects or conditions. Seller does not have an obligation to inspect the Property for your benefit nor is Seller obligated to repair, correct or otherwise cure known defects that are disclosed to you or previously unknown defects that are discovered by you or your inspectors during escrow. The purchase agreement obligates Seller to make the Property available to you for investigations.

D. BROKER OBLIGATIONS: Brokers do not have expertise in all areas and therefore cannot advise you on many items, such as soil stability, geologic or environmental conditions, hazardous or illegal controlled substances, structural conditions of the foundation or other improvements, or the condition of the roof, plumbing, heating, air conditioning, electrical, sewer, septic, waste disposal, or other system. The only way to accurately determine the condition of the Property is through an inspection by an appropriate professional selected by you. If Broker gives you referrals to such professionals, Broker does not guarantee their performance. You may select any professional of your choosing. In sales involving residential dwellings with no more than four units, Brokers have a duty to make a diligent visual inspection of the accessible areas of the Property and to disclose the results of that inspection. However, as some Property defects or conditions may not be discoverable from a visual inspection, it is possible Brokers are not aware of them. If you have entered into a written agreement with a Broker, the specific terms of that agreement will determine the nature and extent of that Broker's duty to you. YOU ARE STRONGLY ADVISED TO INVESTIGATE THE CONDITION AND SUITABILITY OF ALL ASPECTS OF THE PROPERTY. IF YOU DO NOT DO SO, YOU ARE ACTING AGAINST THE ADVICE OF BROKERS.

E. YOU ARE ADVISED TO CONDUCT INVESTIGATIONS OF THE ENTIRE PROPERTY, INCLUDING, BUT NOT LIMITED TO THE FOLLOWING:

- 1. GENERAL CONDITION OF THE PROPERTY, ITS SYSTEMS AND COMPONENTS: Foundation, roof, plumbing, heating, air conditioning, electrical, mechanical, security, pool/spa, other structural and non-structural systems and components, fixtures, built-in appliances, any personal property included in the sale, and energy efficiency of the Property. (Structural engineers are best suited to determine possible design or construction defects, and whether improvements are structurally sound.)
2. SQUARE FOOTAGE, AGE, BOUNDARIES: Square footage, room dimensions, lot size, age of improvements and boundaries. Any numerical statements regarding these items are APPROXIMATIONS ONLY and have not been verified by Seller and cannot be verified by Brokers. Fences, hedges, walls, retaining walls and other natural or constructed barriers or markers do not necessarily identify true Property boundaries. (Professionals such as appraisers, architects, surveyors and civil engineers are best suited to determine square footage, dimensions and boundaries of the Property.)
3. WOOD DESTROYING PESTS: Presence of, or conditions likely to lead to the presence of wood destroying pests and organisms and other infestation or infection. Inspection reports covering these items can be separated into two sections: Section 1 identifies areas where infestation or infection is evident. Section 2 identifies areas where there are conditions likely to lead to infestation or infection. A registered structural pest control company is best suited to perform these inspections.

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Buyer's Initials () ()

Broker's Initials () ()

Reviewed by _____ Date _____



