



**AIR CRE CONTRACTS
STRATEGY SEMINAR**

**MASTERING BUYER-BROKER
REPRESENTATION AGREEMENTS**

TOPICS

- Understanding California Civil Code Section 1670.50 (Effective Jan 1, 2025)
- Applicability Across Property Types
- Breaking Down “Offers” and “Purchases”
- Compensation Terms—Getting Paid Fairly
- Defining Broker Services & Responsibilities
- Legal Protections & Potential Pitfalls
- Agreement Termination & Renewal Rules
- Exclusive vs. Non-Exclusive Agreements
- Compliance Risks & Best Practices



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California Civil Code Section 1670.50

Effective January 1, 2025

Significant change in residential and commercial real estate brokerage practices

BUYER'S TOP 3 OBJECTIONS:

“Don't want to sign nothing”

“So long as I don't pay”

“May want to work with other brokers”

AGREEMENT REQUIRED BY LAW

Note on top of the Agreement explains this requirement:

“A buyer-broker representation agreement shall be executed between a buyer’s agent and a buyer as soon as practicable, but no later than the execution of the buyer’s offer to purchase real property.”

“*Carrot*” – No Representation Agreement, No Commission to Broker (Civil Code 1670.50(d)(3) & 1624(a)(4))

“*Stick*” – No Representation Agreement violates licensing law, subjecting broker to discipline (Civil Code 1670.50(e))

TIMING OF SIGNED AGREEMENT

Must be signed before significant deal progress, but no later than offer submittal

Meant to inform Buyer early in the process of options:

- Request seller to pay some or all compensation to Buyer's Broker - seller may accept or reject
- Agree to pay Broker (in addition to the purchase price)
- Before Buyer and Seller reach agreement, Buyer may:
 - Walk away
 - Proceed without representation
 - Seller's agent be dual agent

PROPERTY TYPES COVERED

Applies to purchase of all

- Residential
 - Multifamily
 - Single-family
- Commercial
 - Office
 - Retail
 - Industrial
 - Vacant land

DOES NOT APPLY TO:

- Sale of state and federal lands
- Loans
- Leases with:
 - Option to Purchase?
 - Right of First Refusal?
 - Right of First Offer?
 - Right of First Negotiation?

“OFFER”

Statute does not define “offer”

- AIR CRE Offer
- Letter of intent
- Email proposal

EXCLUSIVE V. NON-EXCLUSIVE

Main difference re Broker's compensation:

Broker paid if during the Term Buyer enters purchase contract as a result of:

Non-Exclusive - Broker's submission of Buyer's Offer to Seller

Exclusive – Broker, another broker or even Buyer

- Does not matter who introduced property to Buyer
- Even if another broker is entitled to compensation

SPECIFIC OR TO BE IDENTIFIED PROPERTY

- Specific known property and/or
- Property which meets certain characteristics

Can use either Exclusive or Non-Exclusive in either situation or both situations

PROPERTY CHARACTERISTICS - SECTION 1.4

Property Characteristics (*complete as many as appropriate*): **specific real property** located at (*complete address, parcel number, etc.*) _____ and/or **real property with the following characteristics**:

Type: ___ industrial, ___ office, ___ retail, ___ vacant land, ___ hospitality, ___ multi-family residential (5+ units), ___ multi-family residential (2-4 units), ___ single family residential (including condominiums and manufactured homes), ___ ground lease coupled with improvements, ___ mobile home, or _____.

General location: _____.

Approximate building size: _____.

Approximate land size: _____.

PROPERTY CHARACTERISTICS - SECTION 1.4 (CONT'D)

Property Characteristics (*continued*):

Price range: ____.

Cash down payment: ____.

Financing: New loan in the approximate amount of ____; Seller financing in the approximate amount of ____; assume/subject to existing financing in the approximate amount of ____.

Cap rate: ____.

Escrow closing date: ____.

Vacant or Leased.

Other: ____.

PROPERTY CHARACTERISTICS - SECTION 1.4 (CONT'D)

Use non-exclusive when buyer wants to be able to have other brokers bring them deals, such as

- 1031 Exchange buyers
- Brand new relationship with broker

Some buyers want to entice listing broker, so willing to enter exclusive representation agreement

If dual agency, listing broker may want to use exclusive agreement to make sure buyer will not switch to or insert another broker in the deal

PROPERTY CHARACTERISTICS - SECTION 1.4 (CONT'D)

Complete as many fields as possible

More information and detail:

- Strengthens Broker's commission claim
- Avoids dispute over commission claim with another Broker

Once property is identified, then good practice to sign new Buyer-Broker Representation Agreement to make sure specific property is covered

EXCLUDED PROPERTY – SECTION 1.5

Exclude a property if already known to Buyer (even if fits Section 1.4 Characteristics)

Exclude a property if:

- Buyer previously hired other broker and Buyer may owe commission to another broker
- Buyer wants to avoid being liable for two commissions
- Broker wants to avoid working with Buyer to then find out another broker previously presented same property to Buyer

EXCLUDED PROPERTY – SECTION 1.5 (CONT'D)

Make sure you discuss with client and complete Excluded Property in Section 1.5

Important to complete to avoid conflicting commission claims.

Excluded Property (*identify any property which Buyer desires to exclude, and any property which if purchased by Buyer would entitle anyone else to compensation from Buyer as Buyer's broker, salesperson or representative*): ____ . Notice: If Buyer is bound by a valid representation agreement with any other broker and Buyer purchases a Property, then Buyer may owe Compensation to Broker under this Agreement and compensation to such other broker under the other representation agreement, even if such other broker is not involved.

EXCLUDED PROPERTY – SECTION 1.5 (CONT'D)

Backstop - In Section 5.5 Buyer represents:

There are no effective, valid or enforceable exclusive or non-exclusive representation or listing agreements to which Buyer is a party with any other broker, salesperson, finder or others for any Property (other than an Excluded Property).

There are no other restrictions, impediments or limitations on Buyer's right, ability and capacity to Purchase a Property or for Broker to be paid the Compensation as provided in this Agreement.

Broker could still demand (or sue) to be paid

Good practice to avoid these types of conflicts

EXCLUDED PROPERTY – SECTION 1.5 (CONT'D)

In Section 5.4 Buyer represents:

There are no pending, and to the best of Buyer's knowledge, threatened actions, suits, arbitrations, claims or proceedings in which Buyer is or will be a party arising from Buyer's failure to pay any commission, fee or compensation due to a real estate broker or salesperson.

Make sure Buyer tells you if Buyer hired another broker who may be entitled to a commission

TERM – SECTION 1.6

Significant durational limits

Term cannot exceed three months for individuals

Trusts are considered individuals

No durational limit for corporations, LLCs or partnerships

TERM – SECTION 1.6 (CONT'D)

In exclusive seller listing agreements:

B&P 10176(f): agreement must contain a “definite, specified date of final and complete termination”

Also applies to buyer-broker exclusive representation agreements

So, while agreements with entities maybe exempt from 3-month durational limit, exclusive agreement must have a definite end date to be valid

TERM – SECTION 1.6 (CONT'D)

If violate durational limits

- Agreement is void and unenforceable
- Broker cannot get paid commission
- Broker in violation of licensing law, possibly subject to DRE discipline
- No such consequences included in Agency Disclosure law

AUTO RENEWAL PROHIBITED

Agreement term cannot renew automatically

For example, cannot provide agreement continues month-to-month until terminated by one party on 30 days notice

Even an agreement with an entity cannot automatically renew

Including auto renewal makes the Agreement void and unenforceable

RENEWALS

Extension or renewals must be in writing, signed and dated

Extension or renewal with an individual cannot be longer than 3 months

Extension or renewal with entities can be any fixed length of time

Use amendment template in AIR CRE library to extend term

RIGHT TO CANCEL

None in the Agreement for Buyer – with or without cause

Section 2.3:

If Buyer does not provide to Broker information, documents and materials reasonably necessary for processing and closing, such as proof of Buyer's funds or prequalification letter by a lender, Broker may terminate this Agreement upon five (5) days' written notice.

Section 7.14:

If a salesperson or broker-associate enters into this Agreement on Broker's behalf, then Broker may terminate this Agreement within the first five (5) days of the Term of this Agreement upon written notice thereof to Buyer.

SECTION 1.8 – COMMISSION AMOUNT

Do not insert total commission for both sides – just buyer's broker

Be sure to state amount of Buyer's broker compensation

- Percentage of the sale price
- Set dollar amount

Do not insert “whatever seller pays”

Find out amount of Buyer Broker's commission beforehand

- If listed, ask listing broker
- If not listed, inquire from seller

SECTION 3.5 – “PURCHASE”

Defined in agreement as:

- acquire ownership
- acquire any right, option, right of first refusal or right of first offer to acquire ownership (even if as part of a lease or another agreement)
- acquire any interest in Seller
- form an Entity or joint venture

Attach commission schedule to cover all these transactions

Can use addendum in AIR CRE library

SECTION 1.9 – WHO PAYS?

Can elect either Seller or Buyer to pay

Can elect either party to pay all or part of compensation

Some buyers pay commission separately to reduce property tax assessment valuation

Most buyers still want Seller to pay commission

Seller to Pay: *(Applicable only if checked)* Broker and Buyer intend seller of a Property ("**Seller**") to pay 100% or *(applicable only if completed)* ___% of Broker's Compensation due under Paragraphs 3.1(a) or 4.2(a) below ("**Seller's Share**"). If the percentage of Seller's Share is less than 100%, then Buyer shall pay the balance of Broker's Compensation.

SECTION 1.9 – WHO PAYS? (CONT'D)

To have Seller pay, check first box in Section 1.9 so Seller pays 100% of Broker's Compensation

May elect to have Seller pay less than 100% of Buyer's broker's commission

If Seller is to pay less than 100%, then complete rest of Section 1.9

Specify the percentage that Seller pays which defaults to Buyer paying the rest

SECTION 3.5 – SELLER WON'T AGREE TO PAY

Buyer makes offer but Seller does not agree to pay Seller's Share, then Buyer

- Can pay commission (or shortfall), or
- Elect not to pay but then Buyer cannot buy property for a year after end of Term

SECTION 3.5 – SELLER WON'T AGREE TO PAY (CONT'D)

Not triggered unless buyer makes an offer first

Section 3.5 defines "Offer"

- Written offer
- Letter of intent
- Letter of interest
- Proposal
- Memorandum of terms
- Term sheet or
- Counter to any of the foregoing

SECTION 3.5 – SELLER WON'T AGREE TO PAY (CONT'D)

Balancing interests of buyer and broker

- Buyer does not owe Broker's commission
- Buyer does not have to agree to pay Broker's commission
- Protect broker for introducing a property

Motivates parties to work together toward a compromise

Important: Complete a realistic commission amount since then buyer may be precluded from buying for a year or agree to pay

SECTION 3.1 – COMMISSION WHEN DEAL CLOSES

If Buyer enters purchase contract during Term, Broker is paid when purchase is consummated:

- *Exclusive*: submission of Buyer's Offer by Broker, another broker or even Buyer itself
- *Non-exclusive*: submission of Buyer's Offer by Broker

Commission due even if closing occurs after end of Term so long as purchase contract entered during Term

SECTION 3.1 – COMMISSION WHEN DEAL DOES NOT CLOSE

Same in either exclusive or non-exclusive agreements

Buyer owes compensation if Buyer breaches either:

- Purchase contract (*e.g.*, Buyer does not close after waiving all contingencies); or
- Representation agreement

SECTION 1.7 – PROTECTION PERIOD

Buyer submits offer which is not accepted during Term but parties make a deal later

Broker is still paid if during Protection Period Buyer enters purchase contract for a property for which buyer made an offer during the Term as a result of:

- *Exclusive* - Broker, Buyer or anyone else submission of Buyer's Offer
- *Non-Exclusive* - Broker submission of Buyer's Offer

SECTION 1.7 – PROTECTION PERIOD (CONT'D)

Broker must within 5 days after the end of Term provide buyer list of Introduced Properties

Otherwise, no commission during Protection Period

Bright line test is the submittal of Offer (as defined in Section 3.5)

Not good enough if Broker showed the property, provided data, did research, etc.

Protection Period default duration is three (3) months but can be changed

SECTION 3.5 – AFFILIATES

Defined as:

- Successors or assigns of Buyer
 - Buyer assigns to a new LLC formed by individual Buyer
 - Buyer “flips” property by assigning purchase contract for profit
- Related to, affiliated with or controlled by Buyer

SECTION 3.5 – AFFILIATES (CONT'D)

To prevent buyer circumventing commission obligation by having another buy Property for Buyer:

- Introduced by Broker acquires any right, title or interest in the Property for, on behalf of or at the request or direction of Buyer
- In which Buyer has any right, title or interest

SECTIONS 2.1 AND 2.2 – BROKER'S SERVICES

Broker shall use reasonably diligent efforts to locate a Property for Buyer's consideration

Assist in negotiating terms

Facilitate purchase of property

SECTION 1.10 – AGENCY DISCLOSURE

Agency Disclosure must still be provided

Even if dual agency, still need buyer-broker representation agreement signed by buyer

Q&A
