

# Broker Agreement

This Agreement is dated as of \_\_\_\_\_, 200\_\_\_\_ between **Apex Mortgage Services, Inc.** a California Corporation, Department of Real Estate Broker License No. 01514271 located at 1551 No. Tustin Avenue, Ste. 660, Santa Ana, CA 92705 and \_\_\_\_\_ a \_\_\_\_\_ located at \_\_\_\_\_ (hereinafter know as (“Broker”).

- A. **Apex Mortgage Services, Inc.** and Broker are mortgage brokers and/or lenders and are and will remain licensed as the California Department of Real Estate or other such regulating entity.
- B. Broker originates a wide variety of mortgage applications. It desires from time to time to submit mortgage applications (the “Applications”) from loan applicants (“Applications”) to **Apex Mortgage Services, Inc.** for its consideration.
- C. The purpose of this Agreement is to serve as a master agreement governing all applicants Broker submits to **Apex Mortgage Services, Inc.**

NOW, THEREFORE, the parties agree as follows:

- 1. **Non- exclusive arrangement** – Broker may submit and **Apex Mortgage Services, Inc.** will consider applications for mortgage loans. Broker shall have no obligation to submit Applications on an exclusive basis, but shall not submit any application concurrently to more than one mortgage company(s) Likewise; **Apex Mortgage Services, Inc.** shall be free to obtain Applications from other sources. **Apex Mortgage Services, Inc.** shall determine rates and fees on a case-by-case basis.
- 2. **Contents of Applications** – Applications shall consist of at minimum of a completed loan application, credit report and property comparables. It shall be Broker’s duty to perform due diligence on all information submitted. Broker shall be solely responsible for all costs of its origination effort and the charges it incurs for credit, loan officer compensation, marketing and other costs.

3. **Compliance with RESPA - Apex Mortgage Services, Inc.** and Broker shall each provide in their disclosures an estimated disclosure of fees anticipated by each broker. In addition, each submittal to **Apex Mortgage Services, Inc.** shall constitute a representation and warranty that Broker has preformed sufficient services to qualify for compensation under the safe harbor provisions of the Real Estate Settlement Procedures Act and Regulation X contained in the Statement of Policy 1999-1 Regarding Lender Payments to Mortgage Brokers, Federal Register Docket No. FR-4450-N-01 and Statement of Policy 2001-1 Clarification of Policy 1999-1 Regarding Lender Payments to Mortgage brokers, Federal Register Docket No. FR 7414-N-01, including taking the application and providing at least five out of the other thirteen qualifying service categories:
- A. Initiating/ordering a VOE (verification of employment) and a VOD (verifications of deposits)
  - B. Initiating/ordering requests for mortgage and other loan verifications
  - C. Initiating/ordering appraisals
  - D. Initiating/ordering inspections or engineering reports
  - E. Providing disclosures (truth-in-lending, good faith estimate, others) to the Borrower
  - F. Ordering legal documents
  - G. Determining whether the property was located in a flood zone or ordering such service
  - H. Analyzing the applicant's income and debt and pre-qualifying the Applicant to determine the maximum mortgage that the prospective Borrower can afford.
  - I. Educating the Applicant in the home-buying and financing process, advising the Applicant about the different types of loan products available, and demonstrating how closing costs and monthly payments would vary under each product.
  - J. Collecting financial information (tax returns, bank statements) and other related documents that are part of the application process.
  - K. Assisting the applicant in underwriting and clearing credit problems
  - L. Maintaining regular contact with the Applicant, Realtors and Lender between application and closing to apprise them to the status of the application and to gather any additional information as needed.
  - M. Participating in the loan closing

4. **Compensation** – Contingent upon the closing of a loan on the submitted application and disbursement to **Apex Mortgage Services, Inc.** of its compensation in the transaction, **Apex Mortgage Services, Inc.** shall pay **BROKER** for individually negotiated fees for its services. The payment shall be paid directly from the loan escrow when feasible or if not, within 72 hours of **Apex Mortgage Services, Inc.** receipt of such compensation. **Apex Mortgage Services, Inc.** shall have the absolute discretion as to the compensation to be charged on all loans it submits lenders. If **Apex Mortgage Services, Inc.** in its absolute discretion, allows a borrower to rescind a loan after it is funded, the parties shall return their compensation to the extent necessary to accomplish the rescission.
  
5. **Indemnification**
  - (a) By **Apex Mortgage Services, Inc.** shall indemnify and hold **BROKER** and its agents harmless from any and all demands, costs, judgments and claims of any kind (including attorney fees and court costs) arising out of claims on an Application or resulting Loan arising from the acts or omissions of **Apex Mortgage Services, Inc.** or its personnel or agents after the submission of an application to **Apex Mortgage Services, Inc.**.
  - (b) By **BROKER**. **BROKER** shall indemnify and hold **Apex Mortgage Services, Inc.** and its agents harmless from any and all demands, costs, judgments and claims of any kind (including attorney fees and court costs) arising out of claims on an Application or resulting Loan arising from the acts or omission of **BROKER** or its personnel or agents before the submission of an Application to **Apex Mortgage Services, Inc.**
  
6. **Compliance with Laws** Both parties shall in all of their activities under this Agreement comply with the laws of the State of California and the United States. All activities shall be conducted in strict accordance with the California Real Estate Law and/or other laws applicable to real estate brokers and lenders. If either party's operating license ceases to be in good standing, that party shall immediately notify the other in writing.
  
7. **Arbitration Agreements with Applicants** **Apex Mortgage Services, Inc.** shall require all applicants to execute an arbitration agreement requiring the Applicant to arbitrate any and all claims the Applicant may have with **Apex Mortgage Services, Inc.** the lender and any other broker in the transaction, including **BROKER**. If an Applicant initiates arbitration with **Apex Mortgage Services, Inc.**, **BROKER** stipulates to join in such arbitration if it is named in the claim or has a cross-claim against **Apex Mortgage Services, Inc.**

8. **Arbitration of Disputes** The parties agree that any disputes between them shall be decided by binding arbitration under the rules of the American Arbitration Association. The prevailing party shall be entitled to an award of its attorney and accounting fees from the losing party and arbitration costs. All hearings shall be in the County of Orange unless otherwise agreed or ordered by the arbitrator(s). Limited discovery shall be conducted in the discretion of the arbitrator(s).
9. **Status of Parties** The parties are independent contractors not the partners, joint ventures or agents of the other. Neither party has any power to bind or to represent the other. **Apex Mortgage Services, Inc.** is not the agent of any Applicant.
10. **Confidentiality** The name of the Client and/or Private Investor Source, the identity of the particular project, and all information provided by the introducing Party and the Client and/or Private Investor Source shall be deemed confidential information, excepting only such information known to the public, or previously obtained by the Cooperating Party from non-confidential sources. Notwithstanding the above, a Party may disclose confidential information to the Party's legal counsel, officers and employees provided the Party makes a reasonable good faith effort to protect against any unauthorized disclosure of the Confidential Information.
11. **Good Faith** Both Parties will act in the utmost good faith at all times and will deal honestly and fairly with each other so that each Party may receive the reasonable benefits of this Agreement.
12. **Non-Circumvent** The Cooperating parties shall not divert or otherwise take away, either directly or indirectly, the Introducing Party's Client and/or Private Investor Sources. The Cooperating Parties shall not interfere with the present or future economic relationship between the Introducing Party and the Client.
13. **Successors and Assigns** This Agreement shall be binding upon and inure to the benefit of the heirs, successors and assigns of the Parties.
14. **Enforceability** This Agreement shall be interpreted and governed by the laws of the State of California. If any court should find any provision unenforceable, the remaining provisions shall remain in full force and effect to the fullest extent permitted by law.
15. **Interpretation** This Agreement shall not be interpreted for or against other Party by virtue of that Party, or its attorney, having drafted this agreement.
16. **Assignment** Neither Party may assign this Agreement, or any payments or fees due, or delegate any duties without the written consent of the other Party.

17. **Notices** All notices shall be in writing and may be delivered by any lawful means to the address stated on the first page. Any notice to Lender shall include a copy addressed to: Apex Mortgage Services, Inc., 1551 No. Tustin Avenue, Ste. 660, Santa Ana, CA 92705
18. **Termination** Either Party may terminate this Agreement at any time with or without notice to the other Party. Notwithstanding termination, the rights and duties of the Parties under this Agreement shall remain in full force pending the conclusion of any Transaction then pending.
19. **Waiver** The waiver of any provision of this Agreement shall be invalid unless in writing signed by Party making the waiver. The waiver of, or failure to enforce, any provision of this Agreement shall not be a waiver of any further breach of such provision or of any other provision. The waiver by either or both Parties of the time for performing an act shall not be a waiver of the time for performing any other acts.
20. **Headings** The heading in this Agreement are for convenience only and shall not be used to interpret this Agreement.
21. **Word Usage** Unless the context clearly requires otherwise:
  - a. the plural and singular numbers shall each be deemed to include the other;
  - b. the masculine, feminine, and neuter genders shall each be deemed to include the others;
  - c. “shall”, “will” or “agree” are mandatory, and “may” is permissive;
  - d. “or” is not exclusive; and
  - e. “includes” and “including” are not limiting.
22. **Third Party Beneficiary** This Agreement is made solely for the benefit of the Parties to this Agreement and their respective successors and assigns and no other person or entity shall have or acquire any right by virtue of the Agreement.
23. **Survival** Except as otherwise expressly provided in this Agreement, all representations, warranties and covenants contained in, this Agreement shall survive the termination of this Agreement.
24. **Further Acts** Each Party agrees to take such further action and to execute and deliver such further documents as may be necessary to carry out the purposes of this Agreement.

25. **Cooperation of Others** Notwithstanding the restrictions of the paragraph 13, and upon the prior written approval of the other Party, either Party may solicit the cooperation of the others to facilitate a Transaction under the following conditions:

- a. The other cooperating person shall execute a copy of the Agreement;
- b. Any amounts owing or paid to the other cooperating person shall be paid from the Fees otherwise owing to the Party who solicited the other cooperating person;
- c. The Party who solicits the other cooperating person shall defend and indemnify the other Party (according to paragraph 21 of this Agreement) against claims or losses arising out of or in any way related to the other cooperating person;
- d. A Party's consent to use another cooperating person shall be deemed a one-time consent only; and
- e. The Parties shall consider the other cooperating person the same as a Client for purpose of the non-circumvention and confidentiality.

26. **Miscellaneous** This Agreement constitutes an integrated agreement between the parties and supersedes all previous agreements and negotiations. It shall be construed as if drafted by both parties. This Agreement may only be modified or waived by an agreement in writing. This Agreement may be executed in one or more counterpart or signature pages, each of which shall be deemed an original and together which shall comprise one instrument. A facsimile of this Agreement bearing the signature of a party shall have the same legal effect as an original. The parties have executed this Agreement to be effective on the date first set forth above.

**APEX MORTGAGE SERVICES, INC.**  
a California Corporation,

By \_\_\_\_\_ Its \_\_\_\_\_  
Signature Title

Date \_\_\_\_\_

**BROKER**

a \_\_\_\_\_

By \_\_\_\_\_ Its \_\_\_\_\_  
Signature Title

Date \_\_\_\_\_

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Tax ID Number or Social Security Number  
(Fill Out and Sign attached W-9)

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Address

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Telephone Number Fax Number

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E-mail Address

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Person to Contact

**\* PLEASE ATTACH A COPY OF BROKERS LICENSE \***