

Advance fee agreements must be submitted by DRE licensed brokers. If advance fees will be collected by a corporation, the corporation must be licensed by DRE before submitting for review. A DBA must be licensed if used in the agreement.

Submit to:

**Department of Real Estate, Mortgage Loan Activities
P. O. Box 187000
Sacramento, CA 95818**

THE ESSENTIAL ELEMENTS OF AN ADVANCE FEE AGREEMENT

Business and Professions Code § 10026, 10027, 10085, 10085.5 & 10146 and Regulations 2970 & 2972.

An Advance fee agreement cannot be used and advance fees cannot be collected until the Department of Real Estate informs the broker it has no objection to the use of the advance fee agreement by the broker.

An advance fee agreement must be in contract form, with spaces for dating and execution by broker and principal(s). Include the broker (or corporation) license identification number.

The agreement must obligate the principal to pay, at a specified time, a specified advance fee.

The agreement must obligate the broker to deposit the advance fee into a trust account and provide the principal(s) with the verified accountings required by Business and Professions Code §10146. The trust account number and depository must be identified in the agreement and in the trust fund accounting. The broker must sign the trust fund accounting beneath the following attestation: “I hereby represent and attest that this is a true and accurate accounting”. A copy of the accounting format must be submitted to the Department for review.

The agreement must obligate the broker to use the advance fee to fund specified services for the principal’s benefit.

The services can be arrayed vertically, with a description of each service. The agreement must allocate estimated portions of the advance fee to each of the services the broker will provide.

The agreement must obligate the broker to complete the advance fee services by a specified date.

The agreement may not characterize any portion of the advance fee as non-refundable. The advance fee remains the property of the principal(s) and is refundable to the extent it is not expended for the services specified in the agreement. The agreement should contain refund language for the portions of the advance fee not expended should the contract be cancelled or if the advance fee services are not performed.

The agreement must be in not less than 10-point type.

The agreement cannot contain any provision that purports to relieve or exempt the person collecting the advance fee from any obligation to fulfill verbal agreements and representations made by employees and agents of the person contracting for the advance fee.

The advance fee agreement must contain the following notice in not less than 10 point bold type: “Notice: The amount or rate of fees specified in this agreement for services is not fixed by California law. Fees are set by each broker individually and are subject to negotiation between the client (principal) and the broker.”

FOR LOAN MODIFICATION, SHORT SALE AND SIMILAR SERVICES

The agreement and accounting format must include the lender name, address and loan account number.

Short sales must describe whether the services include or exclude submitting a buyer’s offer to purchase.

An advance fee cannot be collected when prohibited by California Civil Code Section 2945.1(b)(3). Therefore, The advance fee agreement must contain the following: “**Notice:** California Civil Code Section 2945.1(b)(3) prohibits any real estate licensee from claiming, demanding, charging, collecting or receiving any compensation from a person whose residence is in foreclosure until all of the promised services have been fully performed and completed. **DO NOT SIGN THIS AGREEMENT IF A NOTICE OF DEFAULT HAS BEEN RECORDED AGAINST THE PROPERTY.**”

The following certification must ALSO be included in the advance fee agreement in not less than 10 point bold type. “PRINCIPAL/BORROWER CERTIFIES THAT A NOTICE OF DEFAULT HAS NOT BEEN RECORDED AGAINST THE PROPERTY, _____”

Initials of Principals