

Variable Dues Formula

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Introduction

At the 1972 Annual Convention, the National Association of REALTORS® Delegate Body approved what is now commonly referred to as the “NAR Variable Dues Formula” for Designated REALTORS®. The formula was crafted to ensure fairness, by basing member dues on the number of individuals licensed with REALTOR® principals (known as “Designated REALTORS®” or “DRs”). The premise is that every licensee in the firm benefits from the DR’s membership in the Association of REALTORS®, and, therefore, the DR’s dues should reflect all licensees in the firm – even those who are not REALTORS®.

This Legal Q&A addresses the questions that are frequently asked by DRs when they receive their annual dues billing from their local association.

Q 1. *Who is included in the dues formula?*

A All individuals licensed directly or indirectly with a DR are included in the computation. An offsetting credit is given to the DR based on the number of non-principal licensees who hold REALTOR®, REALTOR-ASSOCIATE®, or Institute Affiliate membership in their own right.

Q 2. *Who is licensed with a DR for dues purposes*

A A licensee is deemed “licensed with” a DR, if the license of the individual is held by the DR or by any broker who is licensed with the DR or by any entity in which the DR has a direct or indirect ownership interest. An example of an indirect ownership interest in an entity would be where the DR is working under a corporate license, but the licensees’ licenses are actually held by the corporate entity.

Q 3. *Who pays the dues under the NAR variable dues formula?*

A The DR is the person responsible for paying the dues to the local association.

Q 4. *Is there an exception to the NAR Variable Dues Formula?*

A Yes. There are two (2) exceptions to the formula: (1) for non-REALTOR® licensees working in a referral company (“LFRO”) and (2) for non-REALTOR® licensees who are engaged, only, in providing services for which a mortgage loan originator (“MLO”) endorsement is required and who have an MLO endorsement on their license.

Q 5. *What are the requirements for the LFRO exception to apply?*

A In order for the LFRO exception to apply, the DR must certify, in a written statement, that the LFRO agents are (1) working for a separate entity and (2) are engaged in referrals only. If a DR certifies that agents are working for a LFRO, then those agents are not included in the dues formula calculation.

Q 6. *What kind of “separate entity” must a broker have in order to have a LFRO?*

A In California, it is sufficient for a broker to set up a DBA for the LFRO. Of course, if the broker wishes to use a separate corporation for the LFRO agents, that is acceptable, as well, but not necessary

Q 7. *What are the requirements for the MLO exception to apply?*

A In order for the MLO exception to apply, the DR must certify, in a written statement, that the MLO agents are (1) working for an entity in which the DR has an ownership interest; (2) are engaged, only, in providing services for which an MLO endorsement is required; and (3) are not participants or subscribers in any MLS. If the DR certifies that agents are MLOs and meet the requirements for the MLO exception, then those agents are not included in the dues formula calculation.

Q 8. *Is a “separate entity” required in order to qualify for the MLO exception?*

A No. Unlike the LFRO exception, a separate entity is not required for the MLO exception. MLO agents can work side-by-side with non-MLO agents, in the same entity.

Q 9. *Are property managers exempt from the formula?*

A No. Only LFROs and MLOs are exempt from the formula.

Q 10. *Are licensed assistants who work for the DR exempt from the formula?*

A No. The only exceptions to the variable dues formula are for agents who are LFROs and qualified MLOs. Therefore, a non-REALTOR® licensee who acts as an assistant in the DR’s firm is counted for purposes of the formula.

Q 11. *Are licensed assistants who work for a broker-associate in the DR’s firm exempt from the formula?*

A No. The only exceptions to the NAR Variable Dues Formula are for agents who are LFROs and qualified MLOs. Therefore, a non-REALTOR® licensee who is an assistant to a broker-associate in the DR’s firm is counted for purposes of the dues formula.

Q 12. What if the DR or the Broker for whom the DR works has two or more separate corporations, does the dues formula apply to the licensees in all corporations?

A If a REALTOR® is a “principal” in more than one corporation or firm, the REALTOR® principal is responsible for all licensees, in all entities, under the dues formula.

Q 13. What if the DR is working under their own individual license, but he or she is a principal in a corporation under which the non-REALTOR® licensees hang their licenses?

A If a REALTOR® is a “principal” in the corporation, the REALTOR® principal is responsible for all licensees in all entities, under the dues formula.

Q 14. What is the definition of a “principal?”

A Under NAR policy, “principals” include sole proprietors, partners in partnerships, officers and majority shareholders in corporations, and office and branch managers acting on behalf of a principal(s).

Q 15. When a DR pays for non-REALTOR® licensees under the NAR Variable Dues Formula, do those licensees become members of the local AOR, i.e. REALTORS®?

A No. The DR is not paying “dues” for the licensees. Rather, the DR pays his/her own dues as computed on the number of individuals licensed with him/her, but who are not REALTORS®.

Q 16. Can an Association require licensees to become REALTORS®?

A No. If a broker wishes to require his or her licensees to become REALTORS®, that is a business decision for the broker, but no Association of REALTORS® can force a licensee to become a REALTOR®. In addition, the AOR cannot require the DR to force his or her licensees to become REALTORS®.

Q 17. What happens if a DR refuses to pay dues according to the NAR Variable Dues Formula?

A Full payment of dues owed is required for membership in a local AOR. Even partial payment does not satisfy the dues obligation. If a DR refuses to pay his or her full dues using the NAR Variable Dues Formula, the DR along with his or her entire office will be suspended from the local AOR membership, which, also, cuts off C.A.R. and NAR membership.

Q 18. If a DR is not happy with the dues invoice from my local AOR, can he/she join another AOR and avoid the dues formula?

A No. All Associations of REALTORS® in California enforce the dues formula equally.

Q 19. *Where can I obtain additional information?*

A C.A.R. members requiring specific advice should consult their local AOR. The C.A.R. Legal Hotline attorneys will not advise members on the NAR Variable Dues Formula in a manner that may conflict with the position of the local AOR.

The information contained herein is believed accurate as of February 11, 2014. It is intended to provide general answers to general questions and is not intended as a substitute for individual legal advice. Advice in specific situations may differ depending upon a wide variety of factors. Therefore, readers with specific legal questions should seek the advice of an attorney.

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