

# Welcome To Phoenix Funding!

Thank you for your interest in becoming an approved Broker with Phoenix Funding. Phoenix Funding is committed to the origination of quality Alternate "A" paper loans. Per your request, enclosed is a Broker Approval Package. Please complete the package and return it to the above address. We look forward to a long and mutually beneficial business relationship with you.

### Complete Broker Approval Package Must Include

- ✓ Fully Executed Broker Application and Agreement.  
**NOTE: Changes or Modifications made to the Broker Agreement will result in voiding this application.**
- ✓ Copies of applicable licenses for all states in which you conduct business.
- ✓ An executed W-9 Form.
- ✓ A completed Broker Reference List.

### BROKER APPLICATION

Company: \_\_\_\_\_ E-mail address: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Primary Contact: \_\_\_\_\_ Phone: \_\_\_\_\_

Sole Proprietor \_\_\_\_\_ Corporation \_\_\_\_\_ Partnership \_\_\_\_\_ Other \_\_\_\_\_

BROKER OF RECORD	TITLE	% OF EQUITY OWNERSHIP
PRINCIPAL OFFICERS	TITLE	% OF EQUITY OWNERSHIP

Is the company or any of the officers of the company currently involved in any lawsuit or litigation that could affect the company's capacity to perform under this agreement? Yes  No

If yes, attach an explanation to this application. \_\_\_\_\_ Initial Here \_\_\_\_\_ Initial Here

## **BROKER AGREEMENT**

This Broker Agreement (the "Agreement") is entered into on \_\_\_\_\_ by and between Phoenix Funding, a California Corporation ("Lender"), and \_\_\_\_\_ ("Broker").

### **THE BUSINESS RELATIONSHIP**

Lender is engaged in mortgage lending, and desires to underwrite, draw loan documents, fund and close loans which may be secured by a first lien or second lien on residential real property. The business activity is industry defined as "wholesale residential lending."

#### **I. BROKER RESPONSIBILITY**

Broker, at Broker expense, will submit to Lender completed loan packages under such programs, terms and requirements as set forth by Lender from time to time. The loan submission shall include such credit, financial and other information as Lender requires enabling it to adequately investigate and consider the application. Broker, at Broker's expense, shall perform all other functions which Lender requires to facilitate the closing of the loan.

Loan approval shall be at Lender's sole discretion and nothing in this Agreement shall be construed as creating any obligation by Lender to accept the applications or grant loans as requested. Lender shall have no obligation or liability to Broker for refusing to make a loan applied for or for any delay in processing a loan application.

#### **II. BROKER WARRANTIES**

Broker represents and warrants that it is a duly organized and validly existing entity and that it is in good standing under applicable laws and regulations of the United States and the State of \_\_\_\_\_. Broker represents and warrants having requisite corporate authority, power and capacity to enter into this agreement.

Broker represents and warrants that Broker possesses all licenses from all applicable regulatory authority necessary to engage in the activities contemplated by the Agreement. No applications will be accepted, nor any loans funded by Lender, where principals or employees of Broker are involved as principals in the loan transaction submitted to Lender.

Broker represents and warrants that Broker will comply with all laws, rules and regulations applicable to Broker activities in general and to the loan applications in particular including, but not limited to, the Federal Truth-In-Lending Act and Federal Reserve Regulation Z; the Federal Fair Credit Reporting Act; the Federal Equal Credit Opportunity Act and Regulation B; the Federal Real Estate Settlement Procedures Act and Regulation X; and State and Federal Fair Lending and Fair Housing Regulations and other applicable laws. Broker specifically represents and warrants that Broker will provide to the loan applicants all notices required by the Federal Equal Opportunity Act and Regulation B there under.

#### **III. BROKER PAYMENTS AND OFFSETS**

With regard to any approved loan application submitted by Broker to Lender, Lender will pay Broker, only after actual closing of the loan by Lender and after deducting all fees and charges due Lender, such fees, commissions and other considerations as specified in Lender's fee schedule, as amended from time to time by Lender at its sole discretion. No consideration of any kind shall be due on any loan that is rejected or which is not funded and closed by Lender.

In the event that Broker receives a rebate on any loans as specified in Lender's fee schedule, and the loan applicant defaults on the loan payments within the first six (6) payments under the loan, Broker agrees that it shall return the full amount of the rebate to Lender within 30 days of Lender's demand for same.

Amounts owed by Broker to Lender may be offset by Lender against payments owed to Broker by Lender.

Unless directly disclosed to Lender in writing before the funding of any mortgage loan, Broker shall not receive any direct or indirect payment from any person other than the applicant with respect to the mortgage loan, including without limitation, payment involving escrow, appraisal or sale. Broker shall have no direct or indirect ownership in any property intended as security for the mortgage loan under review by Lender.

Broker shall not have the right to assign any of its duties, obligations, or rights under this Agreement without the prior written consent of Lender.

#### **IV. BROKER AS INDEPENDENT CONTRACTOR**

Broker acknowledges that nothing in this Agreement shall be construed to create a joint venture between Broker and Lender. In addition, nothing in this Agreement shall be construed to make Broker a partner, agent, representative, or employee of Lender, and Broker shall not hold itself as such. Broker may not use Lender's name in any advertising medium or any promotional materials. Broker agrees that it shall conduct any and all business activities as an independent contractor to Lender. As an independent contractor, Broker shall determine the method, details, and means of performing all services described within this Agreement.

#### **V. INDEMNIFICATION**

Broker agrees to indemnify and hold harmless Lender and its shareholders, directors, officers, agents, attorneys, employees, successors and assignees from and against and shall reimburse the same with respect to, any and all loss, damage, liability, cost and expense, including reasonable attorney's fees incurred by reason of, or arising out of, or in connection with:

- Any breach of any representation or warranty contained in this Agreement; or
- Broker's failure to perform any obligation hereunder; or
- Any claim by an applicant resulting from Lender's failure or refusal to fund a loan.

Without limiting the generality of the foregoing, in the event of Broker's breach of any representation, warranty or covenant contained in this Agreement, Broker's agreement to indemnify Lender shall extend to and include all repurchase demands made by any third party to whom Lender has sold the loan. This provision is applicable only in the event that Broker has violated the representations or warranties set forth herein.

#### **VI. TERMINATION OF AGREEMENT**

The relationship arising out of this Agreement may be terminated by either party at any time, upon the delivery of written notice of termination to the other party. No grounds for termination are necessary and termination may be made with or without cause.

## **“LOAN FRAUD” ZERO TOLERANCE POLICY**

It is the policy and intent of Phoenix Funding to support the eradication and elimination of loan fraud within the residential lending marketplace.

If any type of loan fraud is found within any area of the “loan file” prior to funding, Lender reserves the right to withhold funding of said loan and immediately cease the business relationship with any and all parties involved.

If loan fraud is found within any area of the “loan file” after the loan has been funded, Lender reserves the right to take appropriate action against the Broker and/or borrower. The following is a list of possible action which may be taken by Lender against Broker or Borrower.

### **POTENTIAL ACTION AGAINST BROKER:**

1. ***At Lender’s option, Lender may require Broker to repurchase from Lender any Loan with found fraudulent activity within 180 days from the date of funding.*** Fraudulent activity shall be deemed to include a default by the Borrower within 180 days of the funding of the loan. However, if caused by the death or serious illness or disability of the borrower, by natural disaster or acts of war, a default within the first 180 days of funding of the loan shall not be considered fraudulent activity.
2. Broker shall pay to lender upon demand the repurchase price for such fraudulent loan, which may be greater in amount than the original loan as Lender may be required to pay to repurchase the Loan from any subsequent Investor.
3. Lender may report any suspected criminal activities to the appropriate authorities for criminal prosecution which may result in possible fines and/or imprisonment.
4. Lender may report any suspected criminal, fraudulent, or unethical activities to the appropriate authorities which may result in revocation of the broker’s license.
5. Lender may share truthful and legally disseminated information regarding Broker’s practices which may cause Broker to have difficulty accessing other lenders, mortgage insurance companies; FNMA, and FHLMC. Any such legally disseminated and truthful information may also be provided to other investors; police agencies; and state and federal regulatory agencies.
6. Lender may institute a civil action for damages.
7. The applicant (borrower) and/or other parties to the transaction may institute a civil action.
8. Lender may revoke Broker’s approved status.

### **POTENTIAL ACTION AGAINST BORROWER:**

1. At Lender’s option, and pursuant to the terms of the Loan Agreement, Lender may pursue foreclosure; acceleration of debt, FNMA/FHLMC Deed of Trust, revised 01/01.
2. Lender may report any suspected criminal activities to the appropriate authorities for criminal prosecution which may result in possible fines and/or imprisonment.
3. Lender may institute civil action against Borrower and/or accomplices.
4. The Lender and/or other parties to the transaction may institute civil action.
5. Lender and/or other parties to the transaction may report to credit agencies resulting in adverse long-term effect on Creditor’s credit score.

Broker agrees to keep and maintain its books and records as to mortgage loans hereunder so as to meet and comply with Federal and State laws and regulations. Broker hereby grants permission and authority to Lender to audit any and all loan files for loans placed with Broker at any time upon reasonable notice to Broker. Broker understands that Lender will maintain an active Quality Control System and that Lender will routinely re-verify pertinent credit documentation and appraisals submitted by Broker.

IN WITNESS WHEREOF, the parties here to have caused this Broker Agreement and Zero Fraud Policy to be executed by their duly authorized representatives as of the date set forth above.

Company Name: \_\_\_\_\_ Lender: Phoenix Funding,  
a California Corporation

By: \_\_\_\_\_ By: \_\_\_\_\_  
SULE CAKMAK  
President

Title: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Date: \_\_\_\_\_

**AUTHORIZATION TO RELEASE INFORMATION**

By executing this Form, the Broker and each of the undersigned persons hereby authorize Phoenix Funding, its assigns, and their authorized agents, at their discretion, to:

- Obtain positive identification of information the Broker has provided on the Broker Application
- To obtain business reference reports and any other information that is of concern to Phoenix Funding.

We acknowledge that such reports and information will be obtained and used only in connection with Phoenix Funding’s approval of the Broker and evaluation of the Broker’s current and continued eligibility to do business with Phoenix Funding and not for any other purposes.

Please provide the information requested below for all principals, officers, and any responsible broker(s), and have them execute where indicated. (This information shall be used for purposes of indemnification only, not for credit reporting purposes.)

NAME	SOCIAL SECURITY #	SIGNATURE

**LIST OF REFERENCES**

In the space provided below, please list at least **three Lenders** who will verify your status as "Approved" and in "Good Standing".

<b>Contact :</b>		<b>Phone #:</b>
<b>Lender:</b>		<b>Approval I.D. #:</b>
<b>Address:</b>		

<b>Contact:</b>		<b>Phone #:</b>
<b>Lender:</b>		<b>Approval I.D. #:</b>
<b>Address:</b>		

<b>Contact:</b>		<b>Phone #:</b>
<b>Lender:</b>		<b>Approval I.D. #:</b>
<b>Address:</b>		

<b>Contact:</b>		<b>Phone #:</b>
<b>Lender:</b>		<b>Approval I.D. #:</b>
<b>Address:</b>		

**CERTIFIED COPY OF RESOLUTION  
OF**

A \_\_\_\_\_

RESOLVED, that \_\_\_\_\_ (the "Broker"), hereby approves, ratifies, confirms and adopts the terms and conditions of the Wholesale Broker Agreement (the "Agreement") by and between Phoenix Funding (the "Lender") and this Broker and any of the following officers are hereby authorized and empowered in the name of and on behalf of this Corporation and under its Corporate Seal, to execute any and all agreements, contracts, assignments, and endorsements, and issuance of checks or drafts, reports, mortgage documents and other papers in connection with documents and information required or deemed necessary by Lender.

FURTHER RESOLVED that this Broker authorizes, ratifies, and confirms the performance of the obligations, covenants and agreements of this Broker as set forth in or contemplated by the Agreement.

FURTHER RESOLVED, that the President or any Vice-President, together with the Secretary or any Assistant Secretary, of the Broker be, and each of them hereby is, authorized to execute and deliver on its obligations pursuant to the Agreement.

FURTHER RESOLVED, that the proper officers of the Broker be, and each of them hereby is, authorized, jointly and severally, to take any and all steps, do any and all things and execute and deliver any and all documents in the name and on behalf of the Broker as maybe necessary or appropriate to carry out the purposes of the foregoing resolutions and perform the obligations of the Broker under the Agreement.

FURTHER RESOLVED, that the Secretary be and hereby is authorized, empowered and directed to certify, under the seal of the Corporation, or otherwise, to Lender

- A. A true copy of these resolutions;
- B. A certificate that the Corporation is duly organized and existing, that its charter empowers it to transact business by the resolutions defined, and that no limitation has been imposed upon such powers by the by-laws or otherwise.

FURTHER RESOLVED, that Lender may rely upon any certification given in accordance with these resolutions, as continuing fully effective unless and until Lender shall receive due written notice of a change in or the rescission of the Authority so evidenced and dispatched.

I, \_\_\_\_\_, hereby declare the foregoing is a true and accurate copy of a resolution adopted by the Board of Directors of \_\_\_\_\_, at its meeting regularly held on \_\_\_\_\_ of \_\_\_\_\_, \_\_\_\_\_.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ .

\_\_\_\_\_  
Secretary's Name (print)

\_\_\_\_\_  
Secretary's Signature

**ADDENDUM TO BROKER CONTRACT REGARDING FRAUD, FIRST PAYMENT DEFAULTS, AND SOLICITATION FOR REFINANCE**

This addendum further clarifies the covenants and warranties section of the Broker/Phoenix Funding contract, and is a valid and enforceable part of the overall agreement.

1. In the event a borrower evidences a first payment default (i.e. – never makes the first payment or subsequent payments at all) that is not due to death, serious injury or medical situations or a natural disaster beyond their control, Phoenix Funding shall consider this circumstance as fraudulent intent on the part of the borrower. The Broker shall be responsible for return to Phoenix Funding of any service premiums or rebates paid above par, and or up to the amount of any commissions paid to them by Phoenix Funding. Repayment shall be due within ten days of written notice by Phoenix Funding, after attempts by Phoenix Funding/Broker to achieve payments have failed.
2. Recapture loss: Broker understands that Phoenix Funding has obligations to its secondary market investors in most cases for loans that pay off within 120 days of the first payment. On loans without prepayment penalties, the broker agrees not to solicit borrowers for refinances such that Phoenix Funding and its investor are paid off within 120 days of the first payment date.

Broker: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_