



CALIFORNIA ASSOCIATION OF REALTORS®

Corporate Legal Services
Tel (213) 739-8279
Fax (213) 480-7724

Variable Dues Formula Q&A for Brokers Introduction

The NAR bylaws require that the annual dues of each local association of REALTORS® (“local AOR”) be in an amount established annually by the NAR Board of Directors times the sum of the number of REALTOR® members of the local AOR and the number of individuals who are licensed with such REALTOR® members of the local AOR and who are not themselves REALTOR® members of the Local AOR, provided such individuals are not otherwise included in the computation of dues payable by another local AOR. In other words, the dues owed by a local AOR to NAR are based on both the number of REALTOR® members of a Local AOR and the number of non-REALTORS® licensed with those member REALTORS®.

The C.A.R. bylaws contain the same dues formula as NAR, and they also specify that the dues formula is used to calculate the dues owed by the local association to C.A.R.

In California, most local AORs adopt the California model bylaws, which contain the variable dues formula that allows the local AOR to calculate the dues of their individual REALTOR® members to include the amount that must be paid by the local AOR to NAR and C.A.R. for non-REALTORS® licensed with REALTORS®. If the local bylaws contain the variable dues formula, the local AOR must collect the dues in accordance with the formula. Failure to do so is a violation of the local AOR’s own bylaws, which, in turn is a violation of California law.

Regardless of the method used by the local AOR to collect its dues, each local AOR pays state dues to C.A.R. and pays national dues to NAR for all the REALTOR® members and non-REALTORS® licensed with those REALTORS® in the state.

This Legal Q&A addresses the questions that are frequently asked by brokers when a local AOR in the state of California has adopted the California model bylaws, or similar dues provisions, in the local bylaws that require that a REALTOR® member’s dues be calculated using the variable dues formula.

Q1. What is the variable dues formula?

A. In 1978, NAR revised its bylaws to require the payment of dues by member associations in accordance with a formula based on the number of REALTOR® members of an association and the number of individuals who are licensed with REALTOR® members of the association who are not themselves REALTOR® members. The dues provision is applicable to those

licensees directly or indirectly licensed with a REALTOR® within the state where the local AOR is located or a bordering state. The formula that NAR allows a local AOR to use in calculating a local REALTOR® member's dues so as to take into account the local AOR's dues obligation to NAR is called the "variable dues formula" and is set forth in the NAR Bylaws, Article II, Section 1(A). The same dues obligation for the local association to C.A.R. is set forth in the C.A.R. Bylaws, Article IX, Section 1.

Q2. *Who is "licensed with a REALTOR®" for dues purposes?*

A. The NAR and C.A.R. bylaws state that an individual is deemed licensed with a REALTOR® if the individual is licensed within the state where the local AOR is located—in this case California—and the license of the individual is held by (1) the REALTOR® or (2) any broker who is licensed with the REALTOR®.

Q3. *Who pays the dues under the variable dues formula?*

A. The Designated REALTOR® ("DR") is the person responsible for paying the dues to the local association. In fact, the variable dues formula describes the formula for calculating the DR's own dues obligation.

Q4. *Are there exceptions to the variable dues formula?*

A. Yes, there are two exceptions.

The first exception is for non-REALTOR® licensees working in a referral company ("LFRO"). The NAR and C.A.R. bylaws address the situation where a REALTOR® has a direct or indirect ownership interest in an entity engaged exclusively in soliciting and/or referring clients and customers to the REALTOR® for compensation, on a substantially exclusive basis. If the REALTOR® annually files a statement with his or her primary AOR, on a form provided by the AOR, listing the licensees affiliated with that entity and certifying that those licensees are solely engaged in referring clients and customers to the REALTOR®, and are not engaged in listing, selling, leasing, managing, counseling or appraising property, then those individuals are not included in the filing REALTOR®'s calculation of the variable dues formula.

The second exception is for non-REALTOR® licensees who work as mortgage loan originators ("MLO"). The NAR and C.A.R. bylaws address the situation where a REALTOR® has a direct or indirect ownership interest in an entity which provides services for which a MLO license endorsement is required. If the REALTOR® annually files a statement with his or her primary AOR, on a form provided by the AOR, listing the licensees affiliated with that entity and certifying that those licensees are solely engaged in MLO activities, and are not engaged in listing, selling, leasing, managing, counseling or appraising property, then those individuals are not included in the filing REALTOR®'s calculation of the variable dues formula.

Q5. *What are the requirements for a LFRO that is exempt from the formula?*

A. In order for the licensees working in a LFRO entity to be excluded from the DR's dues formula, the requirements are as follows:

- The referral agents must work for a separate entity, which means a separate corporation or DBA that is engaged in the referral business;
- The referral agents must not be Participants or Subscribers in a Multiple Listing Service;
- The entity must be engaged, on a substantially exclusive basis, in soliciting and referring clients to the REALTOR®;
- All of the licensees affiliated with the entity are solely engaged in referring clients and customers to the REALTOR®; and
- The DR must certify to the association, on a LFRO Certification Form, that the licensees in the entity are not engaged in listing, selling, leasing, renting, managing, counseling, appraising or arranging financing for real property.

Q6. *What are the requirements for a MLO that is exempt from the formula?*

A. In order for the licensees working in a MLO entity to be excluded from the DR's dues formula, the requirements are as follows:

- The licensees must each have a MLO license or endorsement;
- The licensees must not be Participants or Subscribers in a Multiple Listing Service;
- The entity must be engaged, on a substantially exclusive basis, in MLO activities;
- All of the licensees affiliated with the entity are solely engaged in MLO activities; and
- The DR must certify to the association, on a MLO Certification Form, that the licensees in the entity are not engaged in listing, selling, leasing, renting, managing, counseling, or appraising real property.

Q7. *How is the DR's certification done?*

A. The local association provides the DR with a LFRO or a MLO Certification Form, which, in turn, is filled out by the DR and returned to the AOR. The Form certifies that the requirements for a LFRO or a MLO, set forth in Questions 5 or 6 above (as applicable), have been satisfied.

Q8. *Are licensees who only engage in property management exempt from the formula?*

A. No. The only exceptions to the variable dues formula are set forth in the answer to Question 4, above. Therefore, a non-REALTOR® licensee who only engages in property management is counted for purposes of DR's dues formula.

Q9. *Are licensed assistants exempt from the formula?*

A. No. The only exceptions to the variable dues formula are set forth in the answer to Question 4, above. Therefore, a non-REALTOR® licensee who acts as an assistant in the DR's firm is counted for purposes of the formula.

Q10. *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 variable dues formula are set forth in the answer to Question 4, above. 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.

Q11. *Must the DR pay according to the variable dues formula for every non-REALTOR® licensee licensed with the DR's firm?*

A. Yes, keeping in mind the exceptions for those described in the answer to Question 4. However, each non-REALTOR® licensee is counted only once for purposes of the formula. Therefore, when any particular local AOR calculates the dues of a DR, the variable dues formula would only include those non-REALTOR® licensees not accounted for in the variable dues formula of another DR or at another local AOR. The idea is that the dues owed by the local AOR to NAR and C.A.R. for that non-REALTOR® licensee is only paid to NAR and C.A.R. once and is, therefore, only collected by a local AOR once.

Q12. *When a DR pays for non-REALTOR® licensees under the 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®. The licensees are not local AOR, C.A.R. or NAR members and have none of the benefits of AOR services that are provided to AOR members. The only way a licensee can become a REALTOR® is by signing an application for membership, meeting the qualifications criteria and paying dues to the local AOR.

Q13. *What happens if a DR refuses to pay dues according to the 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 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.

Q14. *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 variable dues formula in a manner that may conflict with the position of the local AOR.

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