

BROKER PACKAGE



We are pleased to see your interest in dealing with us. This is a list of what's needed to become an approved ACC broker. Becoming an approved ACC broker is quite simple, so please fill out, and collect the following information and fax it to us at, 305-402-3232.

Complete Broker Package

- Executed Broker Application
- Executed Broker Agreement
- Executed W-9 Form
- Copy of License(s)
- Executed Fax Authorization Form

ACC Account Executive: _____

1-877-ACC-8889

We take Action to close your commercial loans!



BROKER PACKAGE – Application



BROKER APPLICATION

Business Name:		Tax ID Number:	
Business Address:			
City:		State:	Zip:
Phone Number:		Fax Number:	
Email Address:			

PRINCIPALS

Name	Title	Ownership %

STATES OF OPERATION

Circle all that apply.

AL	AK	AZ	AR	CA	CO	CT	DE	DC	FL	GA	HI	ID
IL	IN	IA	KS	KY	LA	ME	MD	MA	MI	MN	MS	MO
MT	NE	NV	NH	NJ	NM	NY	NC	ND	OH	OK	OR	PA
RI	SC	SD	TN	TX	UT	VA	VT	WA	WI	WY	WV	

If the above given information is true, please execute this letter and fax back to 305-646-8257.

Name (Printed)

Signature

Date



Action Commercial Capital (hereinafter “ACC”) would like to welcome you to our organization and thank you for contacting our offices with your commercial loan inquiries. ACC specializes in collaborating with Mortgage Brokers and other Real Estate Professionals on those hard-to-place loans for apartments and commercial real estate properties.

ARTICLE 1: PARTIES.

This Broker (“Agreement”) is made and entered into effective as of this ____ day of _____, 200__ (hereinafter “**Effective Date**”) between **Action Commercial Capital** (hereinafter referred to as either “**ACC,**” or “**Lender of Record**”) and _____ (insert name of Broker), hereinafter referred to as “**Broker.**” This “**Agreement**” is expressly intended between the parties to bind the Lender of Record and Broker, as well as their agents, employees, companies, business entities, heirs, spouses, successors, partners, representatives, officers, assigns, affiliates and insurers.

ARTICLE 2: RECITALS.

A. WHEREAS: The Lender of Record and Broker set forth in Article 1 immediately above wish to enter into a contract to provide specific services and information to each other for their mutual benefit in order to facilitate the successful arrangement of a real estate loan for the benefit of borrowers brought to Lender of Record by Broker.

B. WHEREAS: Lender provides access to capital via tailor-made loan programs to fit the specific needs of qualifying Borrowers, especially when a Borrower’s needs cannot be fulfilled by common lending institutions

C. WHEREAS: Broker wishes to be paid a broker fee by Lender of Record, and Lender of Record agrees to pay said broker fee in the event closing of the contemplated transaction occurs and the other conditions set forth in this Agreement as detailed herein-below are satisfied;

D. WHEREAS: Both parties hereto acknowledge that Broker’s agreement to abide by the non-disclosure and non-circumvention provisions of this Agreement as set forth in Articles 10 and 11 below have acted as a material inducement for Lender of Record to enter into this Agreement, and absent Broker’s agreement to be bound by these provisions, Lender of Record would not have entered into this agreement;

NOW THEREFORE, in consideration of their mutual promises made herein, and for other good and valuable consideration, receipt of which is hereby acknowledged by each party, the parties, intending to be legally bound, HEREBY AGREE AS FOLLOWS:

Recital Confirmation. The parties agree that the above recitals are true and correct and incorporated herein by this reference.

ARTICLE 3: BROKER WARRANTIES.

Broker warrants that all of their business practices in relation to the transaction contemplated hereunder shall be conducted ethically and that Broker is fully licensed by the State in which the contemplated transaction is set to close. Lender of Record has a zero tolerance policy as to fraud, and as such, Broker warrants that it has not and shall not omit or misrepresent any of the Borrower/s and or subject property information and documentation necessitated in connection with the anticipated loan, nor shall Broker omit or misrepresent any and all qualifying information in loans submitted to ACC. The Broker shall disclose both positive and negative information pertaining to the loan package/s. All documents submitted to Lender of Record by Broker are valid and genuine in every respect. With respect to each loan submitted by Broker to Lender of Record, Broker has complied with all laws and regulations applicable to it as Broker in this particular transaction, and Broker’s performance of its duties hereunder will not violate the provisions of Broker’s organizational documents, the rights of third parties, any agreement to which Broker may be a party, or any court order or judgment to which Broker or its company may be subject. Broker shall be considered waiving/forfeiting its broker fee in connection with this agreement if ACC detects, ascertains or is notified by third parties that Broker has breached the warranties contained in this Article 3. Notwithstanding the foregoing, ACC reserves the irrevocable right to continue to process the contemplated loan for this particular transaction, close said loan, and receive full compensation irrespective of Broker’s breach of the aforesaid warranties.

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ARTICLE 4: LOAN APPROVAL PROCESS.

ACC requires documentation to open a loan, a 1003 loan application and current credit report tri-merge under 30-days old with FICO scores. The Lender of Record and its agents and/or affiliates will require additional documentation and or forms to process, underwrite and close the loan at issue. ACC reserves the right to interview the Borrower/s immediately after acceptance to process the loan contemplated herein. ACC has the unfettered right to contact all parties regarding the contemplated loan immediately after providing Broker with a quote or qualifying information on the contemplated loan/s. Broker hereby acknowledges that ACC and their affiliates are not making any promises, warranties and or representations of any kind, express or implied regarding the funding and closing of said loan on the subject property. In fact, loan approval shall be in the sole discretion of Lender of Record. As such, Broker shall not commit Lender of Record to do anything or take any action without the express approval of Lender, including representing to any third parties or to the Borrower/s that Lender has approved or will approve the loan, until such fact is confirmed in writing by Lender of Record. It is also understood between the parties hereto that Lender of Record’s approval of the loan application is contingent upon Broker’s submission of truthful and accurate information as contained in the relevant Loan Package, and all documentation related to the contemplated loan transaction. In the event that Broker or Borrower/s fail to supply Lender of Record any documentation required or requested by Lender of Record with respect to the contemplated loan transaction, Lender of Record shall have complete discretion, and the sole option to either (a) commit to make the contemplated loan on the documentation provided and requested by Lender of Record; or (b) reject the contemplated loan transaction in its entirety.

ARTICLE 5: APPRAISALS.

All appraisals shall be ordered by ACC only after Lender of Record’s receipt of Borrower/s credit approval. Appraisals shall be completed by one of the Lender’s list of appraisers. In connection with the preparation or submission of any Loan Package, Broker shall not utilize any real estate appraiser, credit reporting agency, or other vendor that is not acceptable in writing by Lender of Record. Failure to abide by this material provision shall constitute grounds for rejection of the loan by Lender of Record, and ACC shall have no liability regarding the Lender’s selection of appraisers. ACC may, however, give consideration to accepting an appraisal previously conducted by an outside source not on the lender’s list, subject to conditions and restrictions (i.e. written approval) set forth herein. ACC shall be fully released and held harmless by Broker from any liability resulting from the ordering of an appraisal not authorized by Lender of Record prior to the receipt of loan approval, and Broker shall accept full liability for any such appraisal fees and required refunds in the event of said unauthorized appraisals. ACC hereby makes no guarantees, warranties verbal, written and/or implied regarding the Lender’s acceptance or approval of outside appraisals. As such, ACC shall not be liable for any underwriting delays and or failures of closing of said loan caused by an outside appraisal. The Lender of Record or its affiliates may request another appraisal from one of their list of appraisers at their sole discretion and at Borrower’s expense. The Lender of Record or its affiliates may charge an appraisal review and environmental insurance study fee as part of underwriting and may require additional time to close said loan. ACC shall not be responsible and shall be held harmless from, among other items, any up front fees paid by the Borrower/s as part of underwriting the contemplated loan.

ARTILCE 6: LOAN DOCUMENTS.

The Lender of Record shall be entitled to charge a redraw DOC fee of \$500.00 to the Borrower/s for any request to change the loan package or ad attendant documentation after said documentation has been prepared. Loan ordering cutoff dates shall generally be the 20th of each month, unless otherwise agreed between the parties in writing. All parties generally have ten to eleven days after loan have been ordered to close the said loan. In the event loans are not ordered prior to cutoff date the Borrower may be required to wait until the 1st of the following month. Any delays on returning fully executed loan docs to Lender of Record or its affiliates prior to the deadlines set forth above may delay closing and, thereby trigger the redraw fee of \$500.00.

ARTICLE 7: TRANSFER TO LENDER OF RECORD:

Broker agrees to transfer and hereby surrender all rights and interest in the property subject to the loan and with respect to the loan package referred to ACC by Broker. Broker’s transferring of said loan package to ACC shall signify Broker’s explicit agreement to voluntarily relinquish and waive any and all of Broker’s rights to cancel the subject loan, collect processing fees, or charge loan origination fees to the Borrower/s outside of closing. Broker shall not have entitlements to receive from Lender of Record personal, proprietary, trade secret or confidential information and documentation, even if said information or documentation relates to Borrower/s. ACC’s rights hereunder shall include, but are not limited to, ACC’s exclusive and irrevocable right to direct party communication, loan structuring, loan pricing and processing, underwriting and closing of said loan without consultation and/or approval from the Broker. In addition, it is agreed between the parties hereto that all loans shall close in the name of Lender of Record or in the name of an affiliate of Lender of Record to be designated solely in writing by ACC.

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ACC BROKER ACCOUNT EXEC

ARTICLE 8: COMPENSATION TO BROKER.

ACC policy and broker fee schedule states no broker fee shall be paid until all loan conditions are met and all documentation required by the Lender of Record to close said loan are received. Broker fees are to be paid when ACC receives verifiable funds at closing and funds intended to be paid to Broker in connection with this Agreement clear Lender of Record's bank. The normal turn around time to mail Broker's check is seven (7) business days. ACC reserves the right to request a modification of all broker fees and or any compensation to Broker in order to effectuate a closing of the contemplated loan. The following is required in order for Broker to receive its compensation in connection with this Agreement: original loan documents, an executed version of this Agreement, satisfaction of Lender loan conditions, Broker's Fee Agreement and executed W9 form.

ARTICLE 9: INDEMNIFICATION:

Broker shall indemnify, defend, and hold Lender of Record, its agents, employees, affiliates, companies, successors, and assigns harmless with respect to any and all loss, damage, causes of action, liability, lawsuits, costs, expenses, and attorney fees incurred by Lender of Record arising out of (a) any breach of the Broker warranties set forth in Article 3 above; (b) Broker's obligation to perform all duties required of it pursuant to this Agreement; and (c) any claim by Borrower/ due to Lender of Record's and/or its affiliates refusal or inability to fund a loan.

ARTICLE 10: CONFIDENTIALITY CLAUSE.

In the course of their business relationship, Broker may gain access to and become acquainted with various trade secrets and confidential information that belongs to Lender of Record, including, but not limited to, financial information, funding sources, business methods, Lender information, and information regarding Lender of Record's affiliated companies, clients, and customers. Collectively, this trade secret and proprietary information will hereinafter be designated in this Agreement as "**Confidential Information.**" Broker shall not use or disclose the Confidential Information to any individual or entity, even if that individual or entity is affiliated with Lender of Record, either directly or indirectly, either during the period of the parties' business relationship or for a three (3) year period thereafter. Broker is under an affirmative obligation to apprise its agents, employees, companies, and professional representatives (*i.e.* lawyers, accountants, *et al.*) regarding the existence and binding affect of this confidentiality provision;

ARTICLE 11: NON-CIRCUMVENTION PROVISION:

The mere fact that, by virtue of the business relationship between the parties, Broker may gain access to Confidential Information as that term is defined in Article 10, **NEITHER BROKER NOR HIS/HER AGENTS, EMPLOYEES, COMPANIES, ASSIGNS, AND AFFILIATES IS AUTHORIZED TO COMMUNICATE, CONTACT, SOLICIT, OR CONDUCT BUSINESS WITH LENDER OF RECORD'S INVESTORS, AFFILIATED COMPANIES, AND LENDERS WITHOUT THE EXPRESSED WRITTEN CONSENT OF LENDER OF RECORD.** Broker further agrees to not circumvent or contact ACC investors, affiliated companies or affiliated lenders for a period of five (5) years following the date of this Agreement.

ARTICLE 12: CONSEQUENCES OF BREACH.

Any violation of the Confidentiality and Non-Circumvention clauses contained in Articles 10 and 11 herein-above shall be considered a material breach of this Agreement, entitling ACC to liquidated damages as well as injunctive relief. The amount of liquidated damages due ACC as a result of Broker's breach of the confidentiality and non-circumvention clauses shall be the complete denial of any and all compensation and broker fees due Broker under any and all Agreements then pending between Broker and Lender of Record. Notwithstanding the foregoing, ACC reserves the right to continue processing and closing and pending loans involving the breaching Broker, and the right to receive its full compensation there-under in addition to any liquidated damages entitlement. In the event there are no current loans pending between Lender of Record and Broker at the time of Broker's breach or threatened breach of the non-disclosure and non-circumvention provisions contained in Articles 10 and 11 above, the parties agree that a liquidated damages amount of \$10,000.00 per proven violation shall be assessed against Broker in the event of any such breach. The parties acknowledge that this liquidated damages amount represents a fair and reasonable damages amount, as the actual loss to be incurred by Lender of Record in the event of Broker's breach shall be unreasonably difficult to ascertain.

ARTICLE 13: ARBITRATION:

ACC and Broker hereby agree to settle and submit all disputes and controversies to arbitration before the American Arbitration Association (hereinafter "AAA"), and both hereby waive their right to file a lawsuit in state or federal court, and **HEREBY WAIVE THEIR RIGHT TO A TRIAL BY JURY.** Any dispute arising out of the issues contained in this Agreement shall be filed with the AAA and heard in the County of Miami-Dade, State of Florida. The prevailing party shall have entitlement to legal fees, arbitration costs and arbitrator fees. Judgment upon the award rendered by the arbitrator shall be entered in any court having jurisdiction thereof. All parties by initialing in the spaces below are acknowledging and agree to have any dispute decided by neutral arbitration as provided by state law, and hereby agree that the Arbitrator shall have the discretion to impose liquidated damages and equitable relief (*i.e.* injunction) to the extent necessary to fulfill the spirit of this agreement and the material provisions contained herein.

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ACC BROKER ACCOUNT EXEC

ARTICLE 14: MISCELLANEOUS.

- A. This Agreement contains the entire understanding of the parties with respect to the subject matter hereof and there are no promises (oral or otherwise), representations, undertakings or obligations other than those expressly set forth herein. This Agreement may not be amended, modified or terminated except in a written instrument executed by the parties hereto, nor may any provision for the benefit of any party be waived by that party except in writing signed by that party;
- B. If a court of competent jurisdiction or Arbitration should declare any part of this Agreement invalid, the remaining provisions of this agreement shall remain in full force and effect. Both parties represent and agree that they have fully read all aspects of this contract and that they fully understand all provisions of this agreement; moreover, each party represents that they have voluntarily entered into this Agreement, that they have been fully informed regarding all implications and ramifications thereon, and that they have the capacity to enter into this Agreement. The titles, captions, or headings of the sections and paragraphs contained in this agreement are inserted for convenience of reference only, and are not intended to be a part of, or to affect the meaning and/or interpretation of this Agreement;
- C. The parties hereby waive any claim or defense that either party was responsible for the drafting of this Agreement, including any legal assertion or defense that this Agreement shall be construed against its drafter;
- D. It is hereby agreed that this Agreement may be executed in counterparts and by way of facsimile transmission; furthermore, the mere fact that all signatures do not appear on a single document shall, in no way, affect the validity of this Agreement.

ARTICLE 14: NOTICES.

Any and all notices or other communications required or desired to be given hereunder by any party shall be in writing. A notice shall be validly given or made to another party if served either personally or if deposited in the United States mail, certified or registered, postage prepaid, or if transmitted by confirmed facsimile. If such notice or other communication is served personally, service shall be deemed made at the time of such personal services. If such notice or other communication is given by mail, service should be deemed given four business days after the deposit thereof in the United States mail. If such notice or other communications given by overnight courier, or electronic transmission (i.e. facsimile or email) service shall be deemed made twenty four hours after the time of confirmation of delivery. The addresses for notices are as follows:

If intended for Lender of Record:
Action Commercial Capital
3971 Tamiami Trail Suite # 206
Coral Gables, FL 33134
Phone: (877) 222-8889
Fax: (305) 402-3232

If intended for BROKER:

Phone:
Fax:

IN WITNESS WHEREOF, the parties have executed this Contract on the date first set forth in Article 1 herein-above:

Name:
Action Commercial Capital
Date:

Name:
Broker
Date:

BROKER PACKAGE – Fax Authorization Form



New Federal Communications Commission (FCC) rules require a fax authorization from your company so Action Commercial Capital can continue to offer the same high level of communication with your company. This authorization must be returned to us so we will be able to send you valuable information to you in the future. The new rules are part of the Federal Telephone Consumer Protection Act (TCPA) and require a signed written consent prior to faxing to you. In response to this newly established rule, ACC is seeking written authorization from all ACC approved brokers to fax materials to your company in the future. In order to receive faxes from ACC, please complete this form and return it.

Company/Organization for which consent is being provided:

Name of Person authorized to provide consent:

Fax Number(s) for which consent is being provided (*Important - List Each Fax Number*):

1. _____
2. _____
3. _____
4. _____
5. _____

I understand that by providing the fax number(s) above, on behalf of the company/organization specified above, I am authorized to, and hereby consent, for the company/organization to receive faxes sent by, or on behalf of, Action Commercial Capital, and/or its subsidiaries and affiliates. I further agree that this authorization has no date of expiration.

Please execute this letter and fax back to 305-402-3232.

Name (Printed)

Signature

Date