



BUYER REPRESENTATION CONTRACT (Exclusive Right to Represent) Hawaii Association of REALTORS Standard Form Revised 12/10 (NC) For Release 5/15 from subcommittee 8/27/15



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THIS CONTRACT is between _____ ("Brokerage Firm"), and _____ ("Buyer").

1. AGENCY:

The Buyer and/or Seller in a real estate transaction in Hawaii may retain a real estate Brokerage Firm as their agent. In such case, the Buyer and/or Seller is represented by the Brokerage Firm and all of its licensees. Hawaii law requires real estate licensees to disclose orally or in writing to Seller and/or Buyer whom the licensee represents. The form of representation may be one of the following:

- a. Seller's Agent. Brokerage Firm represents Seller only unless a disclosed dual agency exists. Seller's Agent owes the highest duties to Seller, including confidentiality, loyalty, and due care and diligence.
b. Buyer's Agent. Brokerage Firm represents Buyer only unless a disclosed dual agency exists. Buyer's Agent owes the highest duties to Buyer, including confidentiality, loyalty, and due care and diligence.
c. Dual Agent. Brokerage Firm represents both Buyer and Seller. This commonly occurs when licensees in the Brokerage Firm representing Seller have Buyer clients looking for types of property similar to Seller's property. In such event, the Brokerage Firm and all of its licensees represent both Buyer and Seller and are dual agents. Dual agents must remain neutral in negotiations and must not advance the interest of one party over the other. A separate Dual Agency Agreement is required under Hawaii law prior to the Purchase Contract.

2. APPOINTMENT OF EXCLUSIVE AGENT:

Buyer agrees that Brokerage Firm will assist Buyer in negotiating the purchase of Property. Buyer agrees to conduct all negotiations for the Property through Brokerage Firm and to refer all letters and inquiries to Brokerage Firm concerning purchase of the Property received from real estate licensees, prospective sellers, and other sources during the term of this Contract. Buyer shall inform Brokerage Firm of any properties that may be of interest to Buyer from all sources, including but not limited to the Internet, newspaper, real estate magazines, For Sale By Owner, etc.

Type of Property:

[] Residential [] Condo/Co-op [] Land [] Commercial/Industrial [x] Business/Income [] Any Real Estate

3. TERM OF AGREEMENT:

Buyer grants to Brokerage Firm the exclusive right to represent Buyer as Buyer's Agent from (Date) _____, to midnight on (Date) _____. Either party may end this Contract with _____ days advance written notice to the other. Neither party may end this Contract before midnight, (Date) _____, unless both parties agree in writing to an earlier date.

4. DUAL AGENCY:

Buyer acknowledges that, from time to time, Brokerage Firm may represent both Seller and Buyer in the same transaction. If such a dual agency situation arises, Seller and Buyer will be asked to sign a separate dual agency consent agreement prior to entering into a Purchase Contract. Buyer further acknowledges that, in a dual agency situation, there is a limitation on Brokerage Firm's ability to represent either party exclusively and fully, and that Brokerage Firm may not act for one party to the detriment of the other. Buyer hereby gives approval to the concept of disclosed dual agency and limited representation. Buyer further acknowledges and agrees that Brokerage Firm may represent other Buyers, whether such representation arises prior to, during, or after the termination of this Contract. In such a situation, Brokerage Firm shall not disclose to any Buyer the terms of any other Buyer's offer.

5. BROKERAGE FIRM OBLIGATIONS:

Brokerage Firm will exercise reasonable skill and care for Buyer, and make reasonable efforts to locate properties in which Buyer may be interested. Brokerage Firm will promote the interests of Buyer with good faith, loyalty, and fidelity, including but not limited to: (a) Seeking a price and terms which are acceptable to Buyer with the exception that Brokerage Firm shall not be obligated to seek other properties while Buyer is a party to a contract to purchase a Property; (b) Procuring acceptance of any offer to purchase the Property and to assist in the completion of the transaction; (c) Presenting all offers to and from Buyer in a timely manner; (d) Disclosing to Buyer any material facts known to Brokerage Firm which would measurably affect the Property value. Brokerage Firm shall not be obligated to make an independent investigation or evaluation of the Property, independently verify statements of Seller or any expert, or verify any information or statements made by Buyer.

6. BUYER'S OBLIGATIONS:

Buyer is obligated to act in good faith to cooperate with Brokerage Firm by furnishing it with all relevant personal, financial, or other information that may be necessary to facilitate the purchase of Property. This includes keeping appointments, attending inspections, returning messages, and advising all other real estate agents that Buyer has executed this exclusive Contract with Brokerage Firm.

Buyer understands and accepts that neither Brokerage Firm nor Licensee can render tax advice, tax planning, tax-deferred exchange information, and the like, or any other technical or legal advice in connection with this Contract. Whenever specialized advice is deemed necessary, Buyer is strongly advised to seek the services of an appropriate professional. Buyer acknowledges that the decision to retain any particular specialist is wholly the decision of the Buyer. Buyer shall notify Brokerage Firm in writing of any areas of particular concern.

Buyer agrees to consider properties selected by Brokerage Firm. Buyer further agrees to act in good faith toward the completion of any property contract entered into in furtherance of this Contract. Buyer has an affirmative duty to protect him/herself, including discovery of the legal, practical

BUYER'S INITIALS & DATE

BROKER'S INITIALS & DATE



and technical implications of discovered or disclosed facts, and investigation of information and facts which are known or made known to Buyer or are within the diligent attention and observation of Buyer. **Buyer further agrees that he/she has not entered into a binding "Exclusive Right to Represent" Contract with any other Brokerage Firm.**

7. NONDISCRIMINATION:

Buyer understands that Brokerage Firm cannot discriminate because of race, sex, including gender identity or expression, sexual orientation, color, religion, marital status, familial status, ancestry, disability, age, or human immunodeficiency virus infection of such person.

8. MEGAN'S LAW:

If the presence of a registered sex offender is a matter of concern to Buyer, Buyer understands that Buyer must contact local law enforcement officials regarding obtaining such information. Brokerage Firm makes no representation that any such information is available for public access.

9. MEDIATION AND ARBITRATION:

If any dispute or claim in law or equity arises out of this Contract, and Buyer and Brokerage Firm are unable to resolve the dispute, Buyer agrees to attempt in good faith to settle such dispute or claim by non-binding mediation through the Local Board of REALTORS® or, in the event the Local Board of REALTORS® does not provide mediation services, then through a mutually agreed upon mediator. If the mediation is not successful, then Buyer will consider arbitration and may seek legal counsel to make this determination. It is understood that if the parties are involuntarily named as defendants in a lawsuit by a third party in any matter arising out of this Contract, this paragraph shall no longer be binding.

10. COMPENSATION: Brokerage Firm's compensation shall be paid through escrow at the time of closing as follows:

a. Buyer agrees to cooperate in Brokerage Firm's efforts to be compensated out of the sales proceeds in the transaction. Buyer's Brokerage Firm will accept as compensation paid by Seller either directly or through an authorized commission agreement with Seller's Brokerage Firm no less than _____ of the purchase price, or \$ _____, which will be paid by Seller either directly or through an authorized commission agreement with Brokerage Firm representing Seller. Should Buyer purchase a property without Brokerage Firm's assistance (such as through an open house or "For Sale By Owner" or Foreclosure), Buyer would owe Brokerage Firm the full compensation.

b. [] b.1. Buyer shall [] shall not [] pay any portion of the amount stated above not paid by, or any portion thereof, not paid by Seller or Brokerage Firm representing Seller's Brokerage Firm. Buyer understands and agrees that compensation payable by Buyer to Brokerage Firm shall be earned by Brokerage Firm and payable upon Buyer's purchase of real estate whether or not Brokerage Firm was involved in the transaction.

[] 2. Should Buyer purchase a property from a "For Sale By Owner" without Brokerage Firm's assistance (such as through an open house or "For Sale By Owner" or Foreclosure), Buyer would owe Brokerage Firm the full compensation less the compensation paid to Brokerage Firm by the For Sale By Owner, or _____ % of the purchase price. Should Buyer purchase a property without Brokerage Firm's assistance (such as through an Open House, Developer's Sale, For Sale By Owner or Foreclosure Auction), Buyer would owe Brokerage Firm the full compensation.

db.c. Entitlement to compensation shall apply to any Purchase Contract executed during the term of this Contract or any extension thereof. Entitlement to compensation will also apply to any Purchase Contract executed within _____ days after the expiration or other termination of this Contract, if the Property acquired was presented to or identified by Buyer during the term of this Contract.

ee.d. If the transaction fails to close through no fault of Buyer, the compensation shall be waived. If the transaction fails to close because of Buyer's default, the compensation shall NOT be waived and shall become immediately due and payable by Buyer. Options exercised after the termination of this Contract shall be considered as purchases for purposes of this Contract.

fd.e. Initial Consultation and Research Fee: Notwithstanding the provisions of Paragraph 10a and 10b above, the Buyer agrees to pay Brokerage Firm a non-refundable fee in the amount of \$ _____ upon execution of this Contract. Any services provided for in this paragraph shall be deemed to be real estate services and not a professional opinion regarding the value of real estate. Fee shall [] shall not [] be credited against any other compensation paid.

11. OTHER SPECIAL TERMS:

12. ACCEPTANCE: Buyer hereby agrees to all of the terms and conditions above and acknowledges receipt of a copy of this Contract.

By signing below, Buyer acknowledges that Brokerage Firm has advised Buyer that this document has important legal consequences and has recommended consultation with legal, tax, or other counsel, before signing this Contract.

Buyer's Name (Print) _____ Brokerage Firm _____

Buyer's Signature _____ Brokerage Firm's Address _____

Buyer's Address _____

Phones _____

Phones _____ Fax _____ Broker's Signature _____

E-Mail _____ Real Estate Licensee _____

Buyer's Name (Print) _____ Phones _____ Fax _____

Buyer's Signature _____ E-Mail _____

Buyer's Address _____ Brokerage Firm acknowledges receipt of non-refundable fee \$ _____
In the form of _____.

Broker's Signature

Phones _____ Fax _____

E-Mail _____

NOTE: THERE IS NO WARRANTY ON PLAIN LANGUAGE. An effort has been made to put this agreement into plain language. But there is no promise that it is in plain language. In legal terms, THERE IS NO WARRANTY, EXPRESSED OR IMPLIED, THAT THIS AGREEMENT COMPLIES WITH CHAPTER 487A OF THE HAWAII REVISED STATUTES, AS AMENDED. This means that the Hawaii Association of REALTORS® is not liable to any Buyer, Seller, or other person who uses this form for any damages or penalty because of any violation of Chapter 487A. People are cautioned to see their own attorneys about Chapter 487A (and other laws that may apply).

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