



**INDEPENDENT CONTRACTOR AGREEMENT
FOR REAL ESTATE AGENTS
Hawaii Association of REALTORS® Standard Form
Revised For Release includes revisions from subcomm 6/23/16**



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This Agreement is effective _____, 20____, between ("Brokerage Firm"), _____, and _____ ("Independent Contractor"). Brokerage Firm is a Member of the _____ ("Local Board or Association of REALTORS®").

RECITALS

Brokerage Firm is duly licensed as a real estate broker by the State of Hawaii and maintains offices, properly equipped with furnishings, equipment, and staff, to provide services to the public.
Independent Contractor is duly licensed by the State of Hawaii to engage in the business of real estate.
Brokerage Firm and Independent Contractor believe it is to their mutual advantage to enter into the business arrangement established by this Agreement.

AGREEMENT

Based upon the above understanding, Brokerage Firm and Independent Contractor agree as follows:

1. **Business Relationship.** Independent Contractor specifically requests independent contractor status, and Brokerage Firm agrees to accept that business relationship.

Independent Contractor recognizes that he or she is not an employee of Brokerage Firm and is not entitled to employment benefits, such as worker's compensation insurance coverage, temporary disability insurance coverage, prepaid health insurance, minimum wage, or participation in pension and profit sharing plans.

Independent Contractor also understands that he or she is entirely responsible for payment of his or her own federal and state income tax, social security, and general excise taxes, if any.

This business relationship does not create a partnership or any relationship other than the contractual relationship established herein.

2. **Sales Activities.** Without affecting the independent contractor relationship, Brokerage Firm shall provide mandatory training and orientation, and shall supervise the activities of Independent Contractor to the extent required by law (including, but not limited to, Chapter 467, Hawaii Revised Statutes, and Chapter 16-99, Hawaii Administrative Rules, as amended from time to time), and Independent Contractor shall comply and cooperate in every way in such training, orientation and supervision. Brokerage Firm shall not, except to the extent required by law, direct or limit Independent Contractor's activities as to hours, geographic area, leads, open houses, opportunity or floor time, production, prospects, sales meetings, schedule, inventory, time off, vacation, or similar activities. In keeping with Brokerage Firm's business philosophy favoring the team approach, nothing in this paragraph prevents Independent Contractor, in the exercise of his or her business judgment, from voluntarily participating in open houses, opportunity or floor time, or sales meetings, or similar activities. Except as established by law, ethical standards, or Brokerage Firm's policies and procedures, Independent Contractor retains sole and absolute discretion and judgment in the methods, techniques, and procedures in selling and soliciting work.

Independent Contractor, consistent with Brokerage Firm's policies and procedures, shall work diligently and use his or her best efforts to (a) sell, exchange, lease, or rent properties listed with Brokerage Firm or other cooperating brokers, (b) solicit additional listings, clients, and customers, and (c) otherwise promote the business of serving the public in real estate transactions to the end that Brokerage Firm and Independent Contractor may derive the greatest benefit possible in accordance with the law. Independent Contractor shall at all times act in accordance with Brokerage Firm's policies and procedures, as amended from time to time, which policies and procedures are incorporated into this Agreement by reference.

Brokerage Firm shall make available to Independent Contractor all current listings in the office, except such as Brokerage Firm may, in its sole discretion, choose to place in the exclusive possession of some other licensee associated with Brokerage Firm. Independent Contractor shall make available to Brokerage Firm and to all licensees associated with Brokerage Firm, his or her listings, which listings shall be under Brokerage Firm's name. In addition, at Independent Contractor's discretion and request, Brokerage Firm may, from time to time, supply Independent Contractor with prospective listings. Independent Contractor shall have absolute discretion in deciding whether to handle, and the method of handling, any such leads suggested by Brokerage Firm. Nothing herein shall be construed to require that Independent Contractor accept or service any particular listing or prospective listing offered by Brokerage Firm, nor shall Brokerage Firm have any right or authority to direct that Independent Contractor see or service particular parties or to restrict Independent Contractor's activities to particular areas.

3. **Office Facilities and Programs.** Brokerage Firm may make available to Independent Contractor, pursuant to Brokerage Firm policy, the use of the basic facilities, staff, equipment, and supplies of the real estate offices operated by Brokerage Firm. From time to time, Brokerage Firm may also make available to Independent Contractor and other licensees associated with Brokerage Firm, books, magazines, video and audio tapes, educational and sales programs, and sales incentive programs, the use of, or the participation in, which is completely voluntary.

4. **Membership.** Independent Contractor shall be, and shall remain, a member in good standing of the National Association of REALTORS®, the Hawaii Association of REALTORS®, the Local Board or Association of REALTORS®, and the Multiple Listing Service.

INDEPENDENT CONTRACTOR'S INITIALS & DATE

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5. **Compliance with Law, the Code of Ethics, and Good Business Practices.** Independent Contractor shall maintain his or her license in a current and active status during the term of this Agreement, including satisfying any mandatory continuing education requirements and obtaining any necessary tax clearances. Independent Contractor shall at all times conduct himself or herself in accordance with the ethical and professional standards of the industry and shall abide by the Code of Ethics of the National Association of REALTORS®. Independent Contractor shall commit no act in violation of federal or Hawaii law and, in particular, shall commit no act for which the Hawaii Real Estate Commission is authorized to restrict, suspend, or revoke Independent Contractor's license or impose other discipline. Independent Contractor shall handle all trust funds in strict compliance with Chapter 467, Hawaii Revised Statutes, and Chapter 16-99, Hawaii Administrative Rules. Further, Independent Contractor shall abide by all of the rules of the Hawaii Association of REALTORS®, the Local Board or Association of REALTORS®, and the rules and regulations of the Multiple Listing Service. In addition, Independent Contractor shall do nothing which will expose Brokerage Firm, its Principal Broker, Broker in Charge, or any of its licensees to any charges of the type described in this paragraph or which would reflect negatively upon them.

6. **Listing Commissions.** Unless otherwise specifically agreed to in writing by Brokerage Firm, all listings taken by Independent Contractor shall be charged the usual and customary commission rates of Brokerage Firm then in effect. Brokerage Firm retains the exclusive right, in its sole discretion, to set and charge commissions on properties listed with it. Brokerage Firm shall advise Independent Contractor of any special commission rate established for any of Brokerage Firm's listings.

7. **Compensation to Independent Contractor.** All commissions shall be paid to Brokerage Firm. Independent Contractor's only remuneration under this Agreement shall be his or her proportionate share, if any, of commissions collected by Brokerage Firm on transactions in which Independent Contractor was a participant.

Any decision to pursue a claim for commission against a client by way of litigation or arbitration shall be exclusively the decision of Brokerage Firm and not Independent Contractor. Similarly, a decision by Brokerage Firm to give all of a Buyer's deposit to Seller when a transaction fails to close is exclusively the decision of Brokerage Firm and not Independent Contractor. Independent Contractor's share of any commission shall be determined by Brokerage Firm's then current Commission Schedule and Related Policies and shall be based solely upon sales produced and not upon hours worked. The schedule for sharing commissions may be varied by written agreement between Brokerage Firm and Independent Contractor before closing of any particular transaction. In the event one or more licensees associated with Brokerage Firm participate with Independent Contractor in a transaction which generates a commission, Independent Contractor's share of the commission shall be divided between the participating licensees according to written agreement or, if no written agreement, by arbitration.

Neither Brokerage Firm nor Independent Contractor shall be liable to the other for any portion of commissions not collected.

8. **Independent Contractor Expenses.** Independent Contractor shall provide and pay for all professional licenses, supplies, services, and other items required in connection with the conduct of Independent Contractor's activities under this Agreement or with respect to any listing or transaction without reimbursement from Brokerage Firm, except as required by law. Brokerage Firm, in its sole discretion, may offer some supplies and services without charge to Independent Contractor and other licensees associated with Brokerage Firm, which Independent Contractor may choose to accept.

In the event that Brokerage Firm elects to advance funds to pay Independent Contractor expenses (e.g., MLS fees and charges or group advertising charges), Independent Contractor shall repay the full amount advanced upon demand. Should Independent Contractor fail to make such payment upon demand, Brokerage Firm, in its sole discretion, may elect to terminate this Agreement or to deduct the full amount from any commissions due Independent Contractor on any transaction without advance notice.

Expenses incurred in the collection of commissions shall be paid by Brokerage Firm and Independent Contractor in the same proportion that the commission is to be shared.

9. **Termination.** Upon written notice being given, and in accordance with Brokerage Firm's policies and procedures, Brokerage Firm or Independent Contractor may terminate this Agreement for any reason which the party, in its sole discretion, deems appropriate. Upon termination, Independent Contractor shall cooperate as may be reasonably necessary to deliver the appropriate notification form to the Real Estate Commission. Brokerage Firm's policies and procedures and the Commission Schedule and Related Policies shall govern the rights and obligations of the parties in the event of any voluntary or involuntary termination and shall be binding upon the parties after termination.

10. **Mediation and Arbitration.** All disputes or claims arising between Independent Contractor and any licensee associated with Brokerage Firm which cannot be resolved by the parties shall be submitted to internal mediation in accordance with Brokerage Firm's policies and procedures. All disputes or claims arising between Independent Contractor and Brokerage Firm which cannot be resolved by the parties shall be submitted to mediation before the Local Board or Association of REALTORS®. If mediation is not successful, the dispute shall be submitted to binding arbitration before the Local Board or Association of REALTORS® or before a private arbitration organization pursuant to its rules of commercial arbitration should the Local Board or Association of REALTORS® decline jurisdiction. This paragraph shall survive termination of the Agreement and shall remain binding upon all parties.

11. **Legal Claims.**

a. **Errors and Omissions.** If Brokerage Firm has an errors and omissions insurance policy and, if Independent Contractor has acted consistently with the policies and procedures of Brokerage Firm as determined in good faith by the Brokerage Firm, and a transaction leads to a claim against Brokerage Firm, thereby triggering legal defense and/or coverage under the Brokerage Firm's errors and omissions policy, the cost of the then applicable deductible under the errors and omissions policy shall be shared by Independent Contractor and Brokerage Firm in the same proportion as the commission is shared by them for that transaction. If Brokerage Firm determines in good faith that Independent Contractor has not acted consistently with the policies and procedures of the Brokerage Firm based upon a prima facie review of the applicable transaction file, then the applicable deductible under the errors and omissions policy shall be paid solely by Independent Contractor; provided, however, that if Brokerage Firm prevails against such claims, then Brokerage Firm will share in the cost of the deductible and reimburse Independent Contractor Brokerage Firm's share of the deductible in proportion to the sharing of the commission between Brokerage Firm and Independent Contractor.

b. **Claims Regarding Brokerage Firm's Commission.** In addition, if the Independent Contractor is not at fault, any extraordinary legal costs associated with a transaction, either before or after closing (e.g., the collection of a commission), shall be shared between Independent Contractor and Brokerage Firm in the same proportion as the commission is to be shared for the transaction, at closing, or as soon thereafter as such expenses may be incurred, up to the total commission earned by Independent Contractor on the transaction.

c. **Claims Unrelated to Brokerage Firm.** If Brokerage Firm is involved in any claim or incurs extraordinary legal costs in a transaction, or in any other real estate related activity, which does not involve a Brokerage Firm commission (e.g., a claim arising from Independent Contractor's previous Brokerage Firm affiliation), the deductible portion of any errors and omissions policy claim and any other legal costs shall be paid solely by Independent Contractor. Brokerage Firm shall have no obligation to contribute in any way to the defense of any charge brought against Independent Contractor for criminal activity, fraud, or for a charge involving one of Independent Contractor's personal transactions.

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d. **Litigation/Settlement Authority.** In any litigation brought by any third party in which Brokerage Firm and Independent Contractor are named, Independent Contractor grants to Brokerage Firm the sole authority to make litigation policy and strategy decisions (including decisions on settlement) on behalf of both parties.

12. **Proprietary Information.** Independent Contractor recognizes that the business and files of Brokerage Firm contain information of significant proprietary value to Brokerage Firm. Both during the term of this Agreement and after termination, Independent Contractor shall not use, for his or her own advantage or for the advantage of any other person, business, or entity, any information gained for or from the business or files of Brokerage Firm. All files and documents pertaining to listings or other transactions are the property of Brokerage Firm and are retained for the purpose of creating a document trail in the event of subsequent legal action.

13. **Attorneys' Fees and Costs.** In the event of any dispute arising from this Agreement which requires arbitration or litigation between Brokerage Firm and Independent Contractor, the prevailing party shall, in the discretion of the court or arbitrator, be entitled to reasonable attorneys' fees and costs in addition to other appropriate relief.

14. **Entire Agreement and Modification.** This Agreement constitutes the entire agreement between Brokerage Firm and Independent Contractor with regard to their relationship and replaces in full any pre-existing agreement between the parties. This Agreement may only be modified, altered, or changed in writing signed by Brokerage Firm and Independent Contractor.

15. **Special Terms.**

INDEPENDENT CONTRACTOR:

BROKERAGE FIRM:

"Independent Contractor" "Date"

Licensee State License No.

By _____
Its Principal Broker/Broker-in-Charge
"Brokerage Firm" "Date"

State License No.

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).

Disclaimer: Brokerage Firms and Independent Contractors understand that the intent of this form is to assist in compliance with Federal and State laws and should in no way substitute for legal advice regarding the Independent Contractor relationship.

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