

RR221 – Dual Agency Consent Addendum – comments from membership May-July 2016

1.		Clear, concise, complete. I approve
2.		Clean and simple
3.		This is one of the best revisions every made. Congratulations!
4.		Reviewed. The changes look good. Clarification and improve the form overall. Hopefully for brokerages, especially the big ones, use it more often.
5.		The new one is to the point and removes a lot of the unnecessary language.
6.		We dont need a new consent addendum, we need NEW AGENCY laws. Our laws are written in a way that does not protect anyone, only confuses the Sellers & Buyers. We need to seriously consider changing to something like Sub-agency or even the Transaction Brokerage that many states have adopted and are considering.
7.		It spells out and is more detailed than the previous version. Mo' clear. No excuse for not understanding. Perspicacious writers. Good job.
8.		Why cannot this be a disclosure instead of an addendum?
9.		Why is this even being changed – it is my understanding that dual agency is one of the least areas of complaint, curious as to why the change
10.		I think the changes for the most part are good, as it more clearly defines the roll of a dual agent, but it does not clearly state that the dual agency can be when either the same agent represents both parties, or the same firm, with two different agents, represent the buyer and seller.
11.		Question as to whether the form should be an Addendum as opposed to just a form since it the instructions state it is to be signed prior to any written contract. An addendum by nature would generally be signed at the time of a listing agreement, buyer rep or purchase contract, for example. Also, on the buy side, there may not be a property address to complete yet if this is signed at time of buyer rep contract, so I suppose we'd just leave that section blank for the time being.
12.		I realize this might be trivial, but I think when you are reviewing a contract everything should remain consistant. When writing Buyers and Sellers use the same verbiage in all of the sentences. For instance, Buyer and Sellers agree..... Instead of going back and forth saying Sellers and Buyers. Choose one way and stick with it. Mahalo
13.		Instead of having a separate addendum to the listing agreement for dual agency, perhaps a revision to the listing agreement to add a statement such as the one below from the CA listing agreement would be appropriate: Other Sellers: Seller understands that Broker may have or obtain listings on other properties, and that potential buyers may consider, make offers on, or purchase through Broker, property the same as or similar to Seller's Property. Seller consents to Broker's representation of sellers and buyers of other properties before, during and after the end of this Agreement.
14.		Looks like we have to have buyer sign before any contract, and this includes buyer's representation agreement, which is a contract, so we have them sign the addendum to the Buyer's Rep contract before we have them sign the Buyer's Rep contract? I am concerned that this will confuse the buyers.
15.	First paragraph	Intro: "any written contract" and "a written contract" are too broad. They are not limited to Real Estate Contracts and as worded would apply to Buyer Rep Agreements, Rental Agreements, and a host of unnamed legal hassles. Intent should be specific Listing Agreements and/or Purchase Contracts only.
16.	First paragraph	In the first paragraph, it states, "shall be signed by Buyer and/or Seller...". Regardless of whether the Seller had previously granted permission for B.F. to enter into Dual Agency, I recommend that the instructions take out the "/or" and make it expressed that both Buyer and Seller sign this form. There is no credible reason to make it iffy whether Seller is to sign. Even if he granted prior permission, it is better that it be reaffirmed in this document. Mahalo!
17.	First paragraph	I believe that the "and/or" should be changed to "and" requiring BOTH Buyer and Seller to sign the dual Agency Consent Addendum prior to an offer being proposed. I further believe that the consent to have a dual agency should be an integral part of the Exclusive Representation of a Seller, listing their property, and of a Buyer Agency Representation form.
18.	Reference date removal	Removal of Reference Date. I understand that you are trying to make this form fit both listings and PCs, but removal of the reference date eliminates the link to a specific contract or a specific listing date. If this is an addendum to a contract then it needs to identify which contract. 3. Why cannot this be a disclosure instead of an addendum?
19.	A-1 Dislcosure deleted verbiage	On page one leave in the wording: Dual Agents must remain neutral in negotiations
20.	A-1 Disclosure	In my opinion I would leave Paragraph A-1 Disclosure, as is.
21.	A-1 Disclosure	I think item A1 should stay with old Dual agency description. New version will lead to much confusion, delete the new and retain the old. The options provided allows for too many individual interpretations which will eventually lead to many lawsuits. Please review this present version with that in mind
22.	A-1(b), (d)	I'm not an advocate of dual agency. Some of the changes to the form seem to increase

		the burden and liability on brokerages with respect to dual agency. Under A-1 Disclosure: B. How is a large brokerage supposed to know this. What happens if a second offer is placed after Buyer 1 submits the offer? Is the Broker responsible for informing agent 1 that he need to add a dual agency addendum? RE: D - how does one define similar properties? How does the dual agency disclosure work in this situation? Is it presented with the listing agreement? Is it presented to Buyers as well? This amended dual agency disclosure is making the subject a lot more confusing...
23.	A-1 (b), (c), (d)	Examples of DA Relationship is A need more specificity. As follows: (b) as worded would require ALL firms with more than one agent to have buyers sign this form. It is unmanageable and only creates liability. (c) same as above. As worded, it punishes firms that have been in business over a long period of time because a current agent would not know that the client had previously dealt with another agent in this firm. (d) "similar" properties is too broad a term. If it is not readily understood, it will end up making the DA Addendum required on all listings and PCs
24.	A-1 (b), (c), (d)	A-1, b, c & d make no sense. b) if 2 agents in the firm are representing different buyers and neither represent seller how can they be dual? c) Any previous client of firms agents makes all the firms agents dual if agent represents them in new transaction? d) Every firm will have similar properties, this would make all firms perpetual dual agents.. None of these are practical and none are dual agency.
25.	A-1(d)	A-1 d is ambiguous.
26.	A-1(d)	A-1 Disclosure: (d) Brokerage firm is representing more than one Seller with similar properties.  COMMENT: I feel this should be removed. It is too vague and is more of a liability for the Brokerage. I feel the attorneys will have a field day with this term.  EXAMPLE: ABC branch 1 on Oahu has a 2BR/1BA home for 400k and ABC branch 2 on Oahu has a distress 2BR/1BA home for \$500k (amount needed to sell to get out of distress). Both homes are similar in size, land area, location. The non-distress home sells in a timely matter but the distress home does not and now is in foreclosure. Brokerage firm did not have either Seller sign this Dual Agency form because it is listed with different offices under the same Brokerage firm. Now Seller from Branch 2 is upset and hires a GREAT LAWYER, who comes across this form and request from the Brokerage branch 2 all agreements signed between the Brokerage and Seller. Wow a Dual Agency form was not included...I don't even want to think of what that attorney may do to that Brokerage firm.  Recommendation: Now if it is written within the beginning portion of the Purchase Contract and Listing Agreement, then I feel it will protect the Brokerage Firm no matter who they are representing or whether or not it's a dual agency contract.  Mahalo for taking the time to hear my comment and for all that you folks do. Much appreciated!
27.	A-1(d)	I think that on the front page where you list the 4 items that put you into a Dual Agency Situation - Item #4 is too VAGUE. There needs to be more clarification on this. It is too broad. And with phrases like that, it almost eliminates anyone or any company from dealing with the same person at the same time. More specifics.
28.	A-1(d)	although I agree that a company representing similar properties is a dual agency situation, defining " similar " should be part of this, otherwise, I would not include item (D) until this issue is clarified.
29.	A-1(d)	I object specifically to A-1 d....as this stipulation is going to require a Dual Agency Addendum with almost all listings/offers. Other details in form make it almost impossible to answer buyer and seller requests for advise...especially pricing of property.
30.	A-1(d)	"...to be signed when brokerage firm representing more than one seller with similar properties."—This is ridiculous. The listing agreement (Par. 13b) already handles this situation. I think you're confusing potential conflict of interest with dual agency. Also, "similar properties" is too broad – how do we determine what's similar. Very subjective. Get rid of this item.
31.	A-1 (d)	RE: Brokerage firm represents more than one Sellers with property like the subject property? I don't understand this would make just about all of our sales Dual Agency? At least all houses in the same price range? All vacant land? It isn't making sense to me?
32.	A-1(d)	A-1(d) "Similar properties" is too subjective. Too much time will be spent trying to determine if one listing is similar to another and would then become Dual Agency. Also, if a brokerage firm has a listing and then acquires a new "similar" listing, how do you then go back to the first one and say, oh sorry, now we are dual agency. Or does then brokerage have to decline the new listing because the first one says no to dual agency. This is a big can of worms and extremely too subjective.
33.	A-1(d)	"(d) Brokerage Firm is representing more than one Seller with similar properties" is too vague and could open up brokers to unnecessary litigation. A seller could say "Well, my unit is a condo and they are listing another condo elsewhere on the Island, so they are 'similar' – why wasn't a dual agency addendum used?" or "they are both properties on Oahu, so they are 'similar'" Thanks for your consideration.
34.	A-2	It looks like you are trying to change this form so that it can be used for other cases of

		implied dual agency other than a transaction where one firm represents both buyer and seller. Other cases are added into the definition, but there is no explanation as in A-2 as to what an agent can and cannot do in the new dual agency cases. The dual agency definition as currently stated in this draft would require every time we show property or take a listing to be a dual agency situation, as the firm probably has or will have a 'similar' listing (whatever that it- it is not defined and is too vague) or another agent in the firm will probably show the same property to another buyer. It is impossible for a buyers agent to know when that case happens, so every showing is a potential dual agency per your definition. So any time we take a listing or show property to a buyer, we would be required to have the client sign this form if we follow your dual agency definition. In the case of showing property to a buyer, what would this form be an addendum to? The buyer rep agreement? We don't always use them for the first showing. Use of this form needs a LOT of explanation that is lacking!
35.	A-2	It appears that section A-2 & what a brokerage and its licensees can & can't do are only applicable to A-1(a) (when both buyer and seller are represented in same transaction) and not to scenarios b, c & d. Want to be sure this is the intention of the committee. For example, if my brokerage represents 2 buyers for the same property, we can recommend suggested offer prices to both. Of course the majority of the items on the 'can do' and 'cannot do' lists would be applicable in any agency situation. – Not sure why the word Property is capitalized. I realize it's like that in our other forms as well but always wondered. Perhaps attorneys consider it as a proper noun in this case since it refers to a specific property/address in the contracts? Thank you!
36.	A-2 bullet #4	Page 2, Paragraph A-2. In bullet-point 4 (I think) about agent disclosure of material facts known the Brokerage Firm. How could an agent know what a 400-agent Brokerage Firm knows? The Sellers' Real Property Disclosure form is filled out by the responsible party--the Sellers. Neither a Brokerage Firm or an agent with that firm is equipped to know what the Seller knows. My recommendation: drop this provision from the form.
37.	Brokerage Firm can do	Amendment deletes what the client would give up in DA like neutrality in negotiations and full disclosure limitations, leaving only a description of what we will do and a "strongly" recommendation they seek legal advise before signing anything. This is absolutely the wrong message because it implies "strongly" that we cannot be trusted, we are doing something shady, or are hiding something that the client needs to be protected from. We should be disclosing the truth and letting people know that if they have any questions or concerns, they should seek legal advice. Remaining neutral (i.e., not putting one person's interests ahead of another in negotiations) and limits on full disclosure (i.e., confidential information about another client remains confidential unless the other client authorizes its release) are the only duties that actually change in Dual Agency. Let them know that.
38.	Brokerage Firm can't do	I consider it ABSOLUTELY incorrect to imply that what a Brokerage Firm cannot do is the same for all types of dual agency. All prohibitions may be true when representing a buyer and seller in the same transaction. However, for example, if I am representing a buyer only in a transaction involving the sale of a property owned by my former client, surely that does not prohibit me from recommending a price (based on numerous non-confidential criteria) that my buyer client should offer.
39.	Pg. 2 initial lines	Is it necessary to have buyers and sellers initial page 2 in addition to full signatures at the bottom? Seems redundant and on other forms where both exist, the bottom initial lines often get missed. Thanks.
40.	Pg. 2 Notice	On page two: the NOTICE: is worded TOO STRONG, it's like you are scaring them into thinking this is a bad idea. Work it better: NOTICE: As with any legal document parties are advised to seek legal counsel prior to signing this Dual Agency Consent Addendum. You still have it covered, but you are not acting like this is a really terrible thing to do. Don't scare them off, just advise them
41.	Pg. 2 Notice	I think that the size of the " NOTICE to contact legal council " should conform to all other bullet font size. I just showed it to a non-realtor and she just said she was scared to sign anything now pertaining to any offer. Just my opinion...and hers. The rest of it looks great. Thanks for all the hard work you put into these forms