

ATTACHMENT D
Standard Forms Committee Meeting (July 8, 2021)



DESIGNATED AGENCY DISCLOSURE AND AGREEMENT
Hawai'i Association of REALTORS® Standard Form
Revised For Release



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BUYER _____ SELLER _____

BUYER _____ SELLER _____

BROKERAGE FIRM: _____

Property Reference or Address: _____

PURPOSE:

HAWAII ADMINISTRATIVE RULES TITLE 16 CHAPTER 99 REQUIRES THAT A WRITTEN DISCLOSURE OF CERTAIN AGENCY RELATIONSHIPS BE MADE PRIOR TO ENTERING INTO ANY WRITTEN CONTRACT. THIS DESIGNATED AGENCY AND DISCLOSURE AGREEMENT SHALL BE SIGNED BY CONSUMER BEFORE SIGNING A WRITTEN CONTRACT. It is possible that the Brokerage Firm and its licensees may represent multiple clients with competing interests due to the number of real estate licensees that may be affiliated with the firm and the number of clients that they may represent.

A-1. AGENCY RELATIONSHIPS. Hawai'i Revised Statutes and the Hawai'i Administrative Rules require that agency disclosures be made in writing prior to the signing of a listing contract or purchase contract. The types of Broker/Client agency relationships include:

- (a) **Seller Agency:** The Brokerage Firm and licensee exclusively represent the Seller
- (b) **Buyer Agency:** The Brokerage Firm and licensee exclusively represent the Buyer
- (c) **Dual Agency:** See Paragraph A-2
- (d) **Designated Agency:** See Paragraph A-4

A-2 WHAT IS DUAL AGENCY? Dual Agency arises when a Brokerage Firm represents multiple clients with competing interests. This is not uncommon when a firm has a large number of clients and is involved in a high volume of transactions. Dual Agency most frequently arises when a Brokerage Firm represents both the Buyer and Seller in the same transaction. It can also arise, however, when a Brokerage Firm represents multiple buyers who are interested in the same property, or multiple sellers of similar properties competing for the same buyers.

When a dual agency situation becomes known, there is an immediate conflict of interest that needs to be addressed since, under Hawai'i law, all of the Brokerage Firm's licensees are regarded as acting as agents for all of the parties represented by the Brokerage Firm. One option to address the conflict is for all the parties to enter into a Dual Agency relationship.

A-3 HOW DOES A "DUAL AGENCY" RELATIONSHIP WORK?

If the parties agree to be represented in a Dual Agent/Client relationship, all of the Brokerage Firm's licensees then become "dual agents", simultaneously representing all parties to the transaction.

Dual Agents are required to remain neutral in all negotiations and must not advance the interests of one party over the other. While they can work with the clients to facilitate the successful completion of the transaction, there are limitations on the services they can actually provide. For example, Dual Agents are not allowed to recommend an offering price for a property, nor how to respond to an offer received. Recommending negotiating strategies is similarly not permitted.

A-4 WHAT IS "DESIGNATED AGENCY"? Designated Agency is another form of Client/Agent relationship that may be used to address the conflicts of interest that arise from Dual Agency situations.

If all of the parties agree to be represented in a Designated Agency relationship, then the Brokerage Firm may proceed to "designate" one or more of the Brokerage Firm's licensees to work exclusively for each of the clients. The licensees that have been so designated are not required to remain neutral, and may advocate for and advise the client they have been designated to work with. The Brokerage Firm shall remain neutral as to all parties represented by the Brokerage Firm.

BUYER'S INITIALS & DATE

SELLER'S INITIALS & DATE



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A-5 SERVICES THAT A DESIGNATED AGENT CAN PROVIDE. As a designated agent the licensee can offer a full array of services, including but not limited to:

1. Provide information about comparable properties and assist the client in making informed decisions as to what price to offer or accept.
2. Suggest strategies to obtain the client's desired results in negotiations.
3. Disclose all material facts known to the Brokerage Firm and/or its licensees about the property.
4. Make recommendations for obtaining the services of experts (legal, surveys, inspections, etc.) and advise on how to respond when the resulting reports are received.
5. Explain real estate forms, terms and procedures.
6. Prepare contracts and associated documents.
7. Assist the client in comparing financial alternatives.
8. Explain closing costs and procedures.

A-6 SERVICES THAT THE BROKERAGE FIRM AND ITS LICENSEES CANNOT PROVIDE

1. Cannot disclose confidential information that the Brokerage Firm or its licensees may know about the client (e.g. motivation to buy/sell, price/terms, negotiating strategy, etc.) without express written permission of the client.
2. Cannot disclose the price the client will accept without the express written permission of the client.

A-7 AGREEMENT TO BE REPRESENTED IN A "DESIGNATED AGENCY" RELATIONSHIP

By signing below the parties acknowledge that they have read this document and understand the agency relationships described herein. The parties understand and acknowledge the Designated Agency representation of the parties by the Brokerage Firm and consent to the Brokerage Firm designating one or more of the Brokerage Firm's licensees to work exclusively for them. The parties are giving their written consent and agree to such representation provided above. Potential conflicts may not be known at the time of signing this document..

A-8 CONSENT AND WAIVER

1. Buyer agrees, consents, and waives any objections to such representations as described above.
2. Seller agrees, consents and waives any objections should Brokerage Firm list and show similar properties as Seller's property.

NOTICE: It is strongly recommended that the parties seek legal counsel prior to signing this Designated Agency Disclosure and Agreement.

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|---|------|---|------|
| Buyer | Date | Seller | Date |
| Buyer | Date | Seller | Date |
| By Buyer's Designated Licensee | Date | By Seller's Designated Licensee | Date |
| By Principal Broker/Broker-In-Charge | Date | By Principal Broker/Broker-In-Charge | Date |

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. 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 consult with their own attorneys about Chapter 487A (and other laws that may apply).