



EXCLUSIVE RIGHT-TO-SELL LISTING AGREEMENT
Hawaii Association of Realtors® Standard Form
Revised 9/03 (NC) For Release 5/04



COPYRIGHT AND TRADEMARK NOTICE: This copyrighted Hawaii Association of REALTORS® Standard Form is licensed for use by the entire real estate industry on condition that there shall be no alteration of the printed portions, pagination, or paragraph numbers or breaks. The use of this form is not intended to identify the real estate licensee as a REALTOR®. REALTOR® is a registered collective membership mark which may be used only by real estate licensees who are members of the National Association of REALTORS® and who subscribe to its Code of Ethics.

Listing Broker is [] is not [] a REALTOR® and member of the National Association of REALTORS®. Seller is aware that the National Association of REALTORS® holds its members accountable for their actions through a strict Professional Code of Ethics, which includes a grievance system to address complaints. Non-members are not required to participate in the grievance system.

TO _____ <small>Name of Real Estate Firm and Address</small> _____ _____ <small>Name of Real Estate Agent and Phone</small>	TYPE OF PROPERTY <input type="checkbox"/> Residential <input type="checkbox"/> Condo/Co-op <input type="checkbox"/> Land <input type="checkbox"/> Commercial/Indus <input type="checkbox"/> Business/Income PROPERTY TMK: _____ ADDRESS: _____
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I own the property described on the ATTACHED EXHIBIT A or I have the right to sign this listing agreement. I want to hire you to market the property. I offer you a listing on this property from _____ to _____. Either you or I may end the listing with _____ days advance written notice to the other. However, neither of us may end this listing before midnight, _____, unless we both agree to an earlier date. I will list the property at a sales price of \$ _____. I will pay you a commission of _____ of the sales price or exchange value of the real and personal property sold or exchanged (refer to Standard Listing Term regarding Commission). The PROTECTION PERIOD for paragraph 4 and 14 shall be _____ days.

Agency: State law requires real estate licensees in Hawaii, prior to preparing any contract, to disclose orally or in writing to Seller and/or Buyer whom it is that they represent. The licensee could be:

- (a) **Seller's Agent.** Represents Seller only, unless a disclosed dual agency exist. Seller's agent owes highest duties to Seller, including confidentiality, loyalty, and utmost care.
- (b) **Buyer's Agent.** Represents Buyer only, unless a disclosed dual agency exist. Buyer's agent owes the highest duties to Buyer, including confidentiality, loyalty, and utmost care.
- (c) **Seller's Subagent.** Represents Seller only. Seller's subagent owes the same duties to you as does your agent. The subagency arises if Seller offers subagency in the Multiple Listing Service ("MLS") and the cooperating broker accepts your offer. There will be no subagency unless it is specifically agreed to as a special term or as an addendum to this listing agreement and made a part of the DROA.
- (d) **Dual Agent.** Represents both Seller and Buyer as clients. To lessen the conflict, the dual agent plays a neutral role in negotiations and must not advance the interest of one party ahead of the other. It commonly arises when other licensees in the listing company have Buyer clients looking for similar types of property. Both Seller and Buyer need to sign a written agreement describing the role of the dual agent. The dual agent acts as a facilitator to bring Seller and Buyer to a common ground of understanding in the negotiations.

Customer. Seller's Agent can also assist Buyer, as a customer. As a customer Buyer is not represented by Seller's Agent. Seller's Agent can assist Buyer in writing the DROA, can present the DROA to Seller, and can report back any acceptance or request for changes to the DROA.

THIS OFFER TO LIST INCLUDES ALL THE STANDARD LISTING TERMS. This offer also includes the following special terms:

By executing this offer to list, I affirmatively state that I own the property and/or hold a power of attorney to execute this document on behalf of the other owners of property.

_____	_____	_____
Date	Signature	Name (print or type)
_____	_____	_____
	Address	Phone
_____	_____	_____
Date	Signature	Name (print or type)
_____	_____	_____
	Address	Phone

We accept your offer to list and agree to comply with the terms of this agreement.

_____ By: _____
Name of Real Estate Firm Phone Principal Broker or Broker-in-Charge Date

I have received a filled-in and fully signed copy of this listing agreement and the attached Exhibit A (MLS Data Sheet). _____
Initials of Seller



STANDARD LISTING TERMS

DEFINITIONS: The word "I" refers to the person or to all persons (if more than one) signing this listing as property owners. Each person who signs this listing as a property owner is fully responsible, either alone or with the others, for this agreement. The word "you" refers to the real estate firm that accepts the listing. The word "Buyer" refers to any person who has bought or may buy in the future. The word "days" refers to calendar days. "Exclusive Right To Sell" means that I shall list this property only with you and you are entitled to a commission if the property is sold by you, by me, or by anyone else. "Option" is an agreement to keep open, over a set period, an offer to sell or buy property.

- 1. **ADVERTISING:** You may advertise the property by newspaper, radio, TV, internet, MLS or by placing signs on the property, or by way of any other medium which is in compliance with County, State, or Federal law or any subdivision/CPR covenants.
- 2. **AGENT'S OBLIGATIONS:** I expect you to try to find a Buyer for the property and to keep me informed of your efforts. You are not responsible for the care or control of the property.
- 3. **BUYER'S DEPOSIT:** You may accept deposits from any person. If any deposit is forfeited, we shall each get one-half of the deposit. But you shall not get more than what would have been your full commission.
- 4. **COMMISSION:** I will pay you the commission and any agreed upon general excise tax under this agreement: (a) if a Buyer and I sign a binding sales or exchange contract at any price and terms during the listing period no matter who finds Buyer (even if I find one); (b) if you find a Buyer who is ready, willing and able to pay the asking price and meet the other terms of this listing even if I refuse to sign a written sales contract; (c) if I sign a written sale or exchange contract with any of your prospects within the PROTECTION PERIOD (your prospects include only those persons to whom the property was presented during this listing and who are named on a written list which you must give me within ten days of the end of this listing); or (d) if I withdraw the property from sale before the end of this listing without your consent. I will pay you commission in U.S. dollars.
- 5. **CONFLICT IN TERMS:** Any handwritten word in this listing prevails over any typed or printed word. Any typed word prevails over any printed. Any special term prevails over any standard term.
- 6. **COSTS:** I will pay for the following items if required: (a) customary closing costs; (b) my own legal fees (if any); (c) fees for a termite inspection report; (d) costs related to providing documents for homeowner associations; and (e) any other costs agreed to by me.
- 7. **DISCLOSURE OF MATERIAL FACTS:** I understand that under Hawaii law I am obligated and hereby agree to give a written disclosure statement to a Buyer containing any fact, defect, or condition, past or present, that would be expected to measurably affect the value of the Property to a reasonable person. Such disclosure statement shall be prepared in good faith and with due care and shall disclose all material facts relating to the Property that: (i) are within my knowledge or control; (ii) can be observed from visible, accessible areas; or, (iii) which are required by Section 508D-15 of the Hawaii Revised Statutes.

Section 508D-15 of the Hawaii Revised Statutes provides that when the Property lies: (i) within the boundaries of a special flood hazard area as officially designated on Flood Insurance Administration maps promulgated by the appropriate Federal agencies for the purposes of determining eligibility for emergency flood insurance programs; (ii) within the boundaries of the noise exposure area shown on maps prepared by the Department of Transportation in accordance with Federal Aviation Regulation Part 150-Airport Noise Compatibility Planning (14 Code of Federal Regulations Part 150) for any public airport; (iii) within the boundaries of the Air Installation Compatibility Use Zone of any Air Force, Army, Navy or Marine Corps airport as officially designated by military authorities; or (iv) within the anticipated inundation areas designated on the Department of Defense's Civil Defense Tsunami Inundation Maps; subject to the availability of maps that designate the four areas by tax map key, I must include this information in the disclosure statement.

I understand that I may be liable for damages if I purposely or negligently fail to comply with this disclosure law. I further understand that if I fail to provide a written disclosure statement or if your inspection of the Property reveals facts inconsistent with or contradictory to my disclosure statement or the inspection of a third party, Hawaii law requires that you disclose those facts to me, to Buyer and to Buyer's agent. This obligation of disclosure limits your agency duty of confidentiality. It is also my understanding that at any time prior to closing I am required to provide an amended disclosure statement if that information is incomplete or inaccurate and it directly, substantially, and adversely affects the value of the Property. This amended disclosure statement shall be delivered to Buyer within ten (10) days of my discovery and in no event later than twelve noon on the last business day prior to the recorded sale of the Property.

- 8. **ESCROW:** I agree to use a bonded company to help with the conveyance of this property. I hereby instruct Escrow to pay your commission and any agreed upon general excise tax directly to you at closing. I agree that I cannot change this instruction without your written consent.
- 9. **FAIR HOUSING LAWS:** You and I will both comply with state and federal antidiscrimination laws. I understand that it is illegal to discriminate against prospective Buyers on the basis of sex, race, religion, color, national origin, handicap, and familial status.
- 10. **FIRPTA: Withholding Required if Seller Is A Foreign Person.** Under the Internal Revenue Code, if Seller is a foreign person or entity (non-resident alien, corporation, partnership, trust or estate), then Buyer is, generally, required to withhold a specified percentage of the "amount realized" by Seller on the sale of the property and forward the amount to the Internal Revenue Service ("IRS"). Such withholding may not be required if Seller obtains and provides Buyer with an authorized exemption or waiver from withholding. **Seller must complete the authorized exemption or waiver form, or Escrow will withhold/collect from Seller the required amount at closing and forward it to the IRS.**

SELLER'S INITIALS & DATE

BROKER'S INITIALS & DATE

11. **HARPTA: Withholding Required If Seller Is A Non-Resident Of The State Of Hawaii.** Under Hawaii law, if Seller is a non-resident person or entity (corporation, partnership, trust or estate) of the State of Hawaii, Buyer must withhold a specified percentage of the "amount realized" by Seller on the sale of the property and forward the amount with the appropriate form to the State Department of Taxation. Such withholding may not be required if Seller obtains and provides Buyer with an authorized exemption of waiver from withholding. **Seller must complete the authorized exemption or waiver form, or Escrow will withhold/collect from Seller the required amount at closing and forward it to the State Department of Taxation.**
12. **LEASEHOLD DISCLOSURE:** If the property is leasehold, I agree to provide at my expense a leasehold disclosure as required by Hawaii State law. I authorize the listing agent to order such a disclosure from a qualified professional, if such professional service is available.
13. **MEDIATION AND ARBITRATION:** If any dispute or claim in law or equity arises out of this agreement, and you and I are unable to resolve the dispute ourselves, I agree 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 I will consider arbitration and may seek legal counsel to make this determination. It is understood that if both of us are involuntarily named as defendants in a lawsuit by a third party in any matter arising out of this agreement, this paragraph shall no longer be binding on either of us.
14. **OPTIONS:** I will pay you one-half of the option premium, if I give any person an option during the listing period. If I give an option to any of your prospects within the PROTECTION PERIOD, I will likewise pay you one-half of the option premium. But I will not pay you more than what would have been your full commission. I will pay the balance, if any, of your commission and any agreed upon general excise tax whenever the option is exercised, even after the listing period. I will not owe you any more commission and any agreed upon general excise tax if an option expires.
15. **OTHER BROKERS:** You may put the listing and other data in the MLS. You and other MLS members may use this information to make market studies, give service to the public and advise clients or customers. You may work with and share your commission with other brokers to market the property.
16. **PROPERTY INFORMATION:** I have read the information on the attached Exhibit A, which is the MLS Data Sheet. As far as I know the facts on Exhibit A are correct. If any facts on the MLS Data Sheet are known to me to be incorrect or incomplete, I will be fully responsible for any actions and costs which may result.
17. **PROSPECTS FROM PRIOR LISTINGS:** When I sign this listing, I will give you a copy of any prospect lists given to me from any earlier listing with any broker. If the other broker earns a commission because of a sale to any prospect on such a list, I will not pay you any commission.
18. **RELEASE OF INFORMATION:** You and Escrow may get any information regarding mortgage balances, lease rents, maintenance fees, property management, collection accounts, property taxes or like items. I hereby authorize any person having such information to give it to you and Escrow. You may give such information to any prospective Buyer.
19. **SELLER'S OBLIGATIONS:** (a) Assistance. I will help you sell the property. I will prepare the property for showings and "open houses". I will give you any information, documents, access, and keys you need. I will let any specialist (termite inspectors, appraisers, surveyors, etc.) inspect the property. You may place a lock box or electronic key device on the property to allow access for showings and inspections. (b) Securing Valuables. I agree to secure all of those items which I consider valuable. If I have a tenant residing on the property, I will notify the tenant to secure their valuables. I further understand that you will not be responsible for securing or protecting any of my tenant's valuables. (c) I understand that you recommend that I consult my attorney, accountant, or any professional expert within those fields of question about the sale of this property. I acknowledge that I am not relying upon you for any of the foregoing services or advice.
20. **SEX OFFENDER REGISTRATION ("Megan's Law"):** I understand that Hawaii has enacted a law requiring sex offenders to register with the State Attorney General's office. I also understand that you are not making any representations as to whether or not the public has access to this information. You are not required by law to obtain information regarding sex offenders for me.

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 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).

SELLER'S INITIALS & DATE

BROKER'S INITIALS & DATE