

# Who is Representing You? Are You a Customer or a Client?

In the next few pages I will explain these issues for you



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**The Difficult I do immediately, The Impossible  
takes a little longer!**

# Real Estate Agent

## When helping the SELLER

Agent may act as either:

### Seller's Agent

OR

### Dual Agent

The Seller is the broker's client, the buyer is a customer. You can buy real property in this situation just as you would purchase a product from a salesperson that is, without professional representation by an agent of your own.

Even though the broker is employed by the seller, he can still work with the buyer, providing information about sales prices of similar properties, and financing procedures. He can help the buyer prepare and present an offer to purchase the property.

The broker, however, cannot negotiate the terms of the transaction for him. As the seller's agent, the broker's primary loyalty is to, the seller. Therefore, buyer may not want to reveal certain information such as his urgency to move or his willingness to increase his offer.

The seller's agent must reveal this type of information to the seller. The seller's agent is expected to act honestly and in good faith and disclose to the buyer all facts which materially affect the property. But, he cannot divulge confidential information to the buyer that is not in the best interest of the seller, such as what price the seller will accept.

It is possible for a broker to represent both buyer and seller in a real estate transaction. Both buyer and seller are clients of the broker. However, Hawaii State law requires that the broker informs both parties of the dual representation, briefly describe the type of representation to be offered, disclose all facts relevant to each party, including any possible conflicts of interest, and obtain their written consent.

The reason for this law is to clarify at the outset the financial relationships and responsibilities of each party in a dual agency situation. Knowing the facts will help you decide how much personal information you wish to disclose to the broker.

A real estate agent who is representing both the buyer and the seller with the knowledge and written consent of both is a "disclosed dual agent." While these agents still give their best effort to marketing the seller's home. Dual agents cannot give either the buyer or the seller undivided loyalty or disclose any confidential information to either party. Broker cannot negotiate price and terms for the buyer.

## When helping the BUYER

Agent may act as either:

**Buyer's Agent**      **OR**      **Dual Agent**

Buyer can retain the services of a broker just as he would hire an accountant or attorney. **Buyer becomes a client** in the purchase and the broker represents him exclusively and owes him Fiduciary Responsibilities. Seller is treated as a customer, buyer's agent cannot divulge confidential information to the seller that is not in the best interest of his client. Buyer gains the benefits of his broker's experience and expertise. In addition, the broker may search out more properties for him and assist in arriving at better terms and offering price.

A real estate agent who is employed by and represents only the buyer is a "buyer's agent." The agreement between the buyer and his agent serves as a contract between them and typically spells out the agent's duties and how the agent will be paid. The buyer's agent may be paid by the seller through a commission split with the listing agent or paid a sales commission by the buyer or by some other mutually agreed-upon formula. Some buyer's agents may also (or instead) charge the buyer a retainer or hourly fee for services. Such arrangements must be in writing.

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## **Things Agents Can't Do**

Real estate agents are not trained to act as attorneys, tax experts, investment advisors, home & pool inspectors, contractors, architects, termite specialists or structural, electrical, mechanical or soil engineers. Agents may only refer you to such experts.

Agents cannot discriminate against any person because of race, color, religion, national origin, sex, marital status, familial status, age, disability status or HIV infection.

Agents cannot withhold material facts or defects from a customer.

Agents cannot misrepresent any facts to induce buyers or seller to act.

Agents cannot withhold from their client, information given to them by a customer.

Agents cannot disclose to a customer, confidential information obtained from their clients.

Agents may not hire or recommend unlicensed contractors or repair persons.

## **Keep Lines of Communication Open**

Open and complete communication is the key to a successful real estate transaction. To get the most value from your relationship with the real estate agent you choose to represent you in buying or selling a property, be sure to spend time with him or her discussing your needs, goals and desires regarding the property you wish to buy or sell.

Be sure to give honest and complete information regarding your situation. The best way to gain loyalty is to give it. Also, Let your agent know if he or she is providing adequate service to you.

Remember, if you are looking for a home and you choose to work directly with the listing agent, that agent's primary legal responsibility and loyalty is to the seller. Therefore, You should take care not to tell the seller's agent any facts you do not wish the seller to know. Listing agent is required by law to reveal such information to his client, the seller.