

What You Need to Know About Dual Agency

By: Mike Gallagher, Mike Gallagher Real Estate, Inc.

Welcome to the “Grey Area” of Real Estate Ethics

It is not my intention to upset anyone working in Real Estate Sales and I am most certainly not saying there is anything wrong concerning the use of Dual Agency but I also think the Public which we all serve as Real Estate practitioners is in large part unaware or at the least mis-informed of their rights and consequences in the use of Dual Agency that can be used in a Real Estate Transaction.

Dual Agency actually means that one agent or one Brokerage is representing both the Buyer and the Seller in a particular transaction.

There are basically two types of Dual Agency: The one I have described above and another where the same Agent represents both the Seller and the Buyer. It is this form of Dual Agency that I believe the Public should be the most aware as it can bear tremendous consequences for both the Buyer and Seller in a Dual Agency Transaction.

In the majority of all Real Estate Transactions, Agency or ‘Who is Working for Whom’ is clear: A buyer has a Real Estate Agent and the Seller has a Real Estate Agent and in the majority of these transactions the two Real Estate Agents are two different people who work with two different Brokerages. No problem, easy to understand.

However, in the case of “Dual Agency” it sometimes starts to look a little ‘Grey’ about who is representing whom. A Dual Agency will exist if the Seller and Buyer both have their own agent but these agents work for the same Brokerage. Each agent owes each of their client’s complete confidentiality and allegiance, however the sale will take place at the same Brokerage each of these agents work for and this makes it a Dual Agency. Both the Buyer and the Seller need to be informed of this event in both verbal and written notification. The written notification must be signed by both the Seller and Buyer before the opening of Escrow and is made part of the contract.

Following is the form used by the National Association of Realtors:



Dual Agency Consent Addendum
Hawaii Association of REALTORS® Standard Form
 Revised 8/11 (NC) For Release 11/12



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.

TO BE SIGNED BY BUYER BEFORE SIGNING THE PURCHASE CONTRACT AND TO BE SIGNED BY SELLER BEFORE REVIEWING THE PURCHASE CONTRACT.

Purchase Contract Reference Date: _____

Property Reference or Address: _____

Tax Map Key: Div. _____ /Zone _____ /Sec. _____ /Plat _____ /Parcel _____ /CPR _____ (if applicable).

A-1 DISCLOSURE:

Dual Agent Brokerage Firm and all its licensees represent both Buyer and Seller. This occurs when licensees in the Brokerage Firm representing a Seller have a Buyer client wanting to purchase Seller's property. In such event, the Brokerage Firm and all of its licensees represent both Buyer and Seller and are dual agents.

Dual agents must remain neutral in all negotiations and must not advance the interest of one party over the other.

A-2 REPRESENTATION:

Dual Agency Representation: Buyer and Seller are represented by the Brokerage Firm _____, Brokerage Firm is [] is not [] a member of the National Association of REALTORS®.

Assisting Buyer: Agent's name: _____			
Bus. _____	Fax _____	Cell _____	E-mail _____

Assisting Seller: Agent's name: _____			
Bus. _____	Fax _____	Cell _____	E-mail _____

A-3 SERVICES:

Seller and Buyer understand that, in a dual agency relationship, where both Buyer and Seller are represented by the same Brokerage Firm, services which can be provided by the Brokerage Firm and its agents, under Hawaii law, are limited. Brokerage Firm can only act as a neutral intermediary to facilitate the transaction. Seller and Buyer also acknowledge that Brokerage Firm is not under any duty or obligation to disclose to Seller and/or Buyer any information which may be known by Brokerage Firm or its other agents, but is not known by Seller's or Buyer's individual agents. Seller's and Buyer's individual agents remain obligated by law to disclose any material facts concerning the property known to them personally.

Buyer and Seller acknowledge that each party has the obligation and responsibility of making his or her own decisions with respect to the terms and conditions to be included in the Purchase Contract.

What the Brokerage Firm and its agents CAN do for Sellers and Buyers:

- Treat the Seller and Buyer honestly
- Provide information to Buyer about the property and community
- Respond to questions from Buyer about the property
- Disclose to Buyer, pursuant to Hawaii law, all material facts about the property known to Brokerage Firm
- Disclose to Seller the financial qualifications which have been provided with the permission of Buyer
- Explain real estate forms, terms and procedures
- Listing Agent at Seller's direction may continue to market the property and solicit additional offers
- Buyer's Agent at Buyer's direction may continue to search for and prepare offers on other properties

BUYER'S INITIALS & DATE

SELLER'S INITIALS & DATE

©Hawaii Association of REALTORS®
 Dual Agency Consent Addendum
 RR221 Rev. 8/11



Abe Lee Realty, L.L.C 1585 Kapiolani Blvd. Honolulu, HI 96814
 Phone: (808)384-9015

Fax: _____ Michael Gallagher

Untitled

- Assist in arranging property inspections
- Explain closing costs and procedures
- Assist Buyer in comparing financial alternatives
- Provide information about comparable properties so that Buyer and Seller can make an educated decision as to what price to offer or accept
- Prepare the Purchase Contract that will include the standard provisions and disclosures for Buyer and Seller
- Work diligently to facilitate the sale and advise Seller and Buyer when experts (legal, survey, accounting, architectural, engineering, etc.) should be retained.

What the Brokerage Firm and its agents CANNOT do for Sellers and Buyers:

- Cannot disclose confidential information that Brokerage Firm or its agents may know about Seller and/or Buyer (e.g., motivation to sell/buy, price/terms, negotiating strategy, etc.), without express written permission of Seller and/or Buyer
- Cannot disclose the price Seller will accept, other than the listing price, without express written permission of Seller
- Cannot disclose the price Buyer is willing to pay without express written permission of Buyer
- Cannot recommend or suggest a price Buyer should offer or pay for the property
- Cannot recommend or suggest a price Seller should accept or counter for the property.

NOTICE: It is strongly recommended that the parties seek legal counsel prior to signing this addendum to the Purchase Contract.

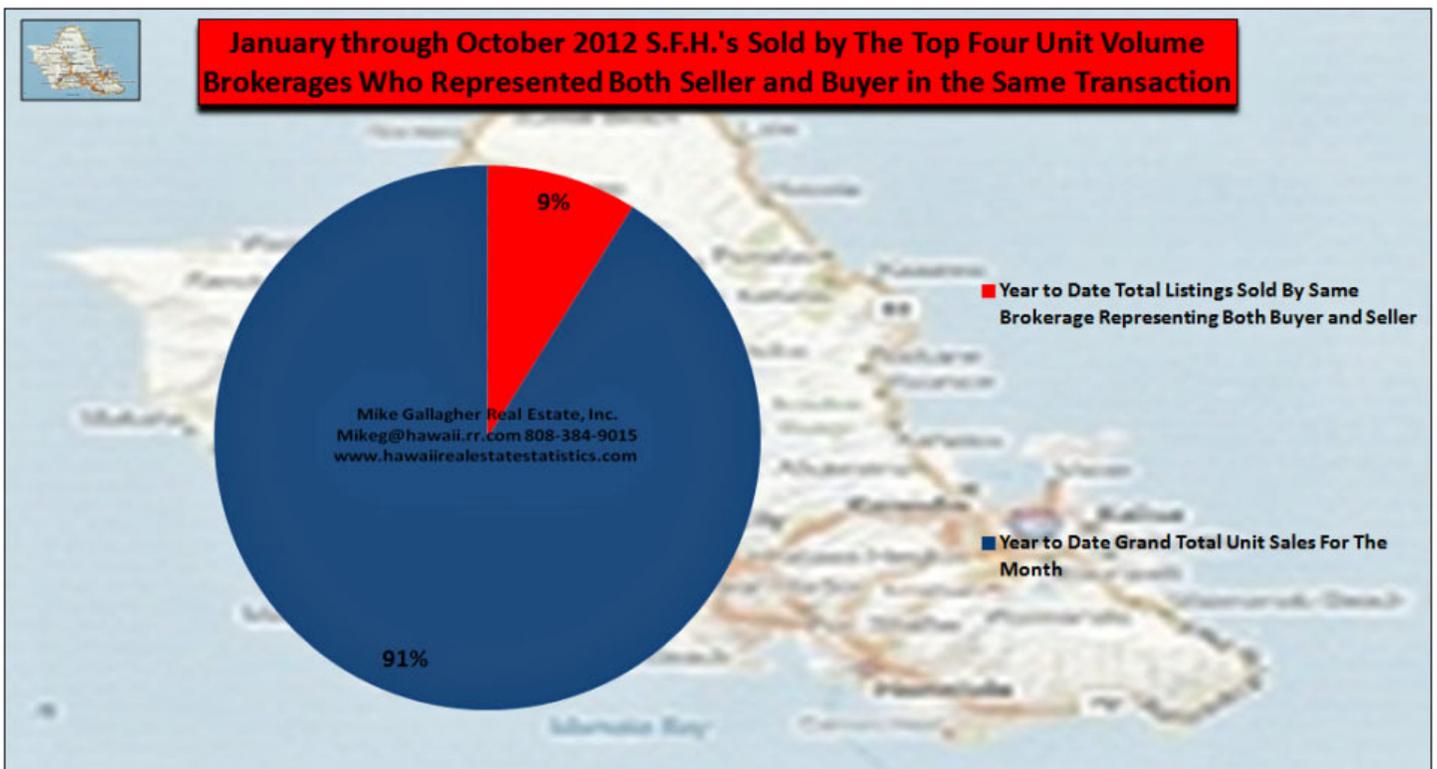
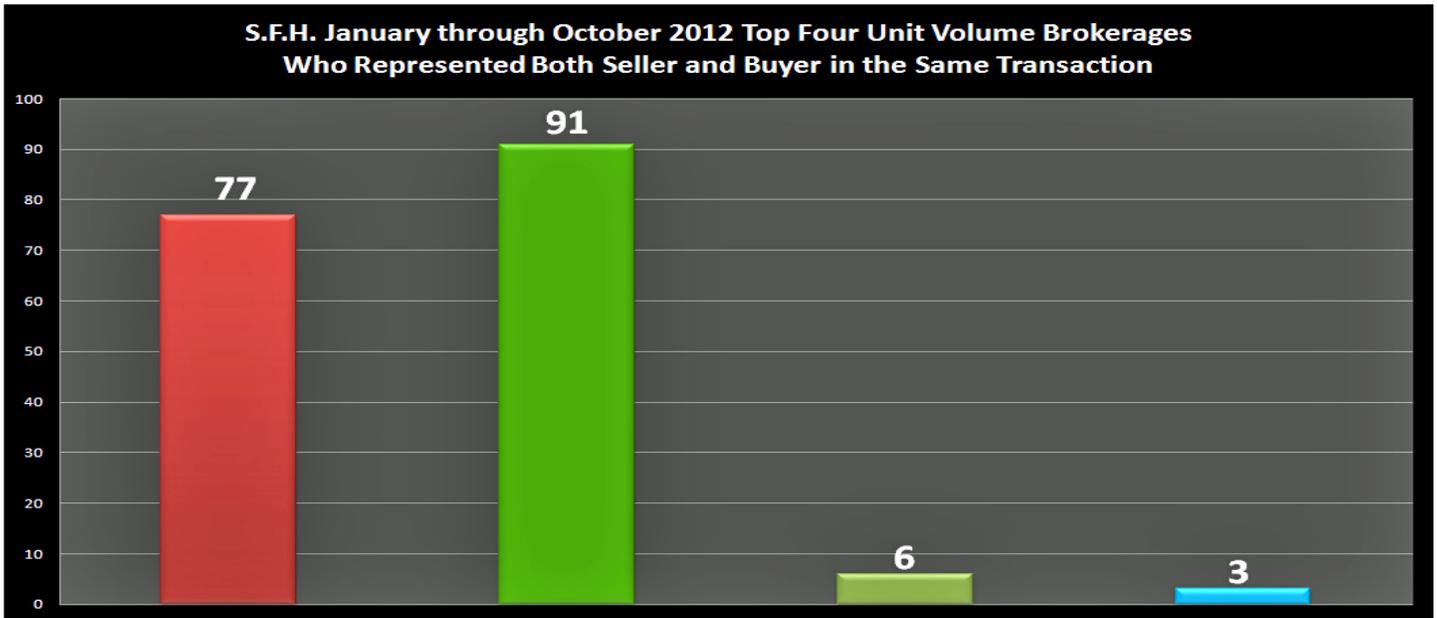
ACKNOWLEDGEMENT:

By signing below, Seller and Buyer understand and acknowledge the dual agency representation of Seller and Buyer by Brokerage Firm and consent to Brokerage Firm and associated agent(s) engaging in such dual agency representation.

_____ Buyer Date	_____ Seller Date
_____ Buyer Date	_____ Seller Date
_____ "BUYER"	_____ "SELLER"
By _____ Agent assisting Buyer Date	By _____ Agent assisting Seller Date
By _____ Principal Broker/Broker-In-Charge Date	By _____ Principal Broker/Broker-In-Charge Date

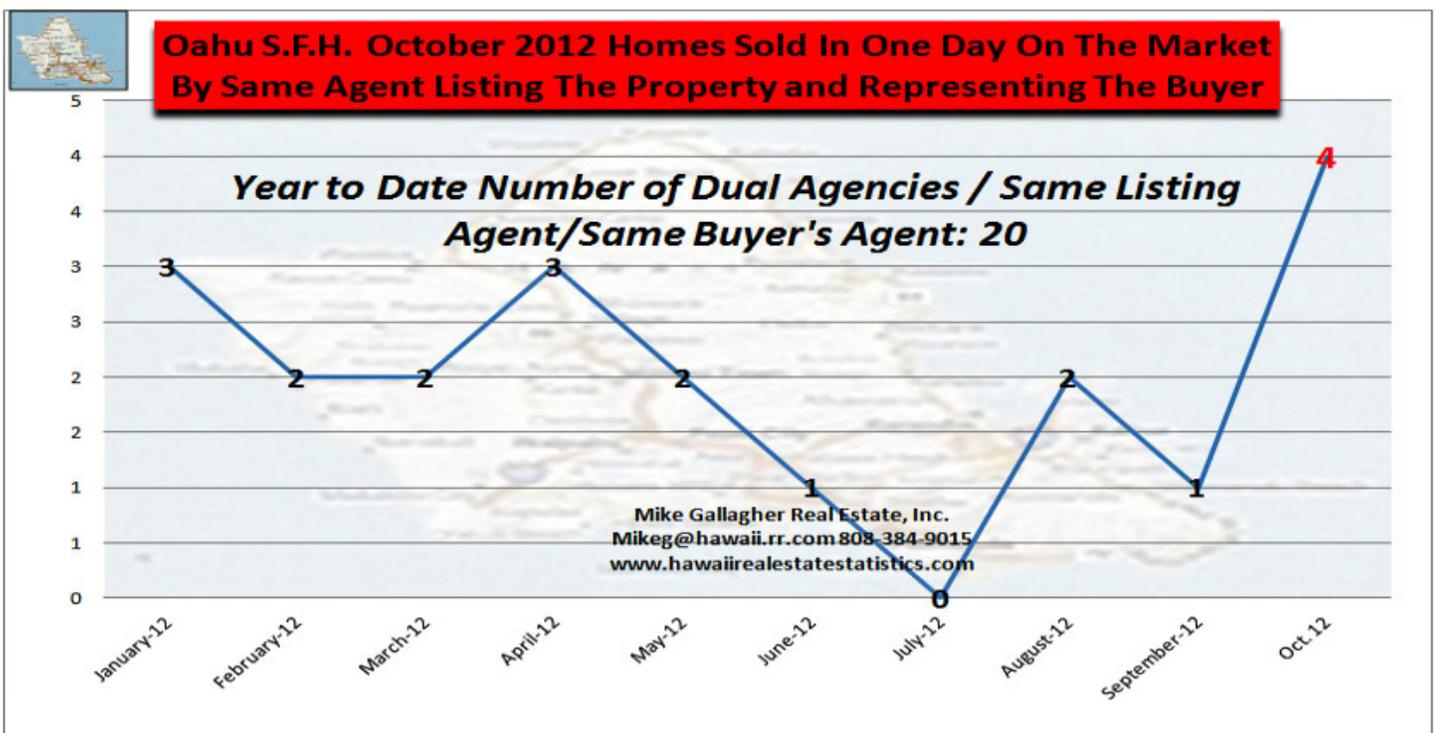
NOTE: THERE IS NO WARRANTY ON PLAIN LANGUAGE. An effort has been made to put this agreement into plain language. But there is no promise that it is in plain language. In legal terms, THERE IS NO WARRANTY, EXPRESSED OR IMPLIED, THAT THIS AGREEMENT COMPLIES WITH CHAPTER 487A OF THE HAWAII REVISED STATUTES, 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).

If you read the first paragraph (A-1) of this Dual Agency Form above you will see that it is referring to Agents working in the same firm representing both the Seller and the Buyer but there are two different agents doing this, one for the Seller and one for the Buyer. This is a typical Dual Agency. There is nothing wrong or devious about this Dual Agency, it often happens and simply cannot be helped especially since the "Big Box" Brokerage Firms who have hundreds of agents, are out there servicing a listing and all the agents of that same Listing Brokerage are looking for a Buyer for that Listing. (I have left out the Brokerages names, if you need them please call me)

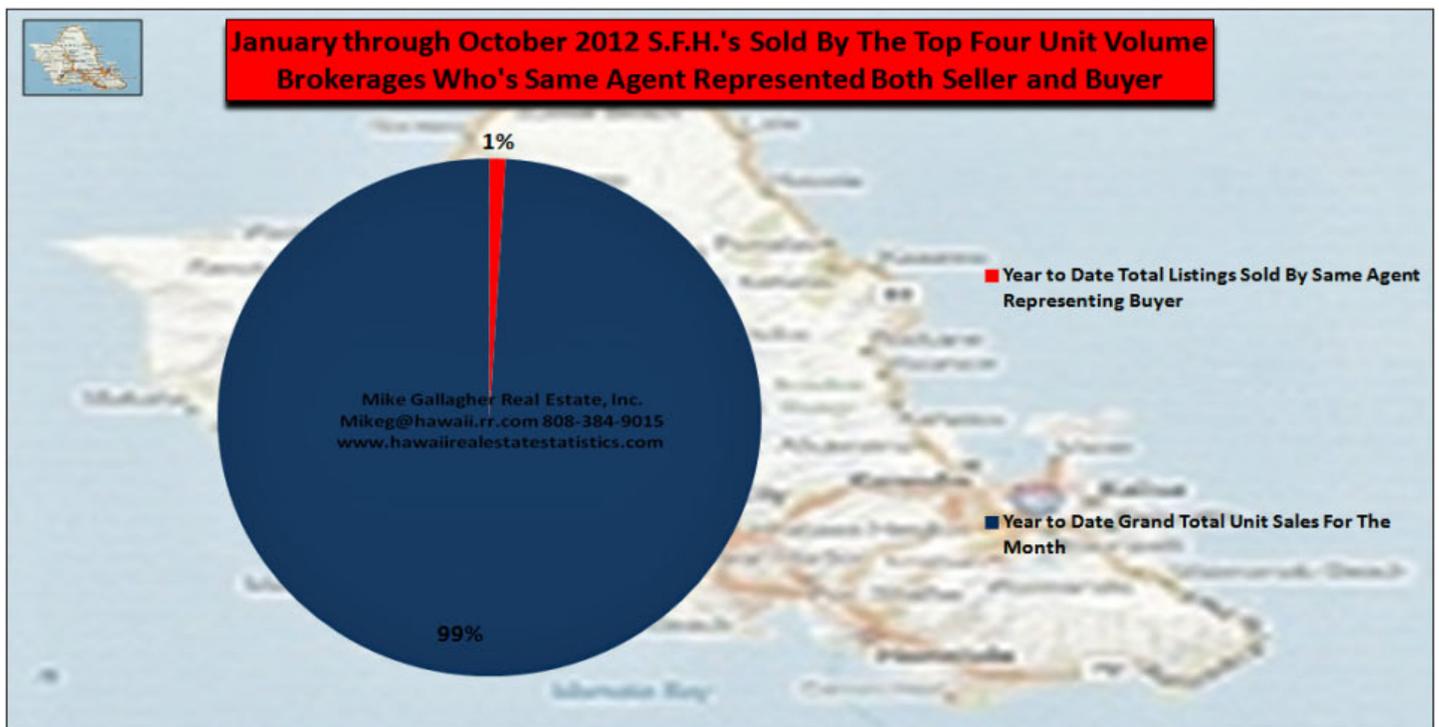


When you look and see how many total Listings the Top Four Unit Volume Brokerages on the Island Sold for Single Family Homes (177) where the same Brokerage represented both the Seller and Buyer in a single transaction but with two different agents who worked for the same Brokerage it really amounts to only 9 percent of the Grand Total of all Listings Sold by all Brokerages on the Island.

What intially prompted me to write this article was that I noticed there were many transactions that were sold in Less Than One Day. I wanted to see who was selling these properties and whether or not Dual Agency was involved.



Once again I found that there was nothing sinister about the fact that there were 177 Dual Agency Transactions where a property was sold by the same Brokerage who listed it but used two different agents or even when the same agent was used for both the Seller and Buyer.



Now this is where it starts to get interesting: While collecting the data I did discover several things:

- 1) There was no difference in any of the Brokerages I checked to see how many Pure Dual Agencies existed where the Same Agent represented both the Seller and Buyer in the sale of property when you looked to see the names of the Agents who do **Pure Dual Agencies** (Same Agent for both Seller and Buyer) thereby collecting **Double Commissions** on the sale.
- 2) Every Brokerage almost without exception has a few of these agents who can receive Double Commissions (who would not?) and will conduct Pure Dual Agency when they choose to do so.

Example of Commissions on a \$500,000 Sale:

$\$500,000 \times 3\% = \$15,000$ / Two Different Agents

$\$500,000 \times 3\% \times 2$ Sides = $\$30,000$ / Same Agent, Both Sides

Again, there is nothing sinister about this but the Public needs to understand what Dual Agency is and the two different types of Dual Agency. It is the Pure Dual Agency that needs to be understood the most as the Seller and the Buyer need to understand that by agreeing to a Pure Dual Agency they are not getting the same rights and services as the 'Typical' Agency where the Seller and Buyer come from two different Brokerages and two different Agents.

Remember the important paragraph in the Dual Agency Consent Form?

What the Brokerage Firm and its agents CANNOT do for Sellers and Buyers:
Cannot disclose confidential information that Brokerage Firm or its agents may know about Seller and/or Buyer (e.g., motivation to sell/buy, price/terms, negotiating strategy, etc.), without express written permission of Seller and/or Buyer Cannot disclose the price Seller will accept, other than the listing price, without express written permission of Seller Cannot disclose the price Buyer is willing to pay without express written permission of Buyer Cannot recommend or suggest a price Buyer should offer or pay for the property Cannot recommend or suggest a price Seller should accept or counter for the property.

NOTICE: It is strongly recommended that the parties seek legal counsel prior to signing this addendum to the Purchase Contract.

I just always ask myself, is that what I want to do when I want to sell my home or buy a home and is it o.k. if my home sells in One Day or even "Sold Before Listed" because selling Before Listed happens too! Am I going to reach the widest possible prospects

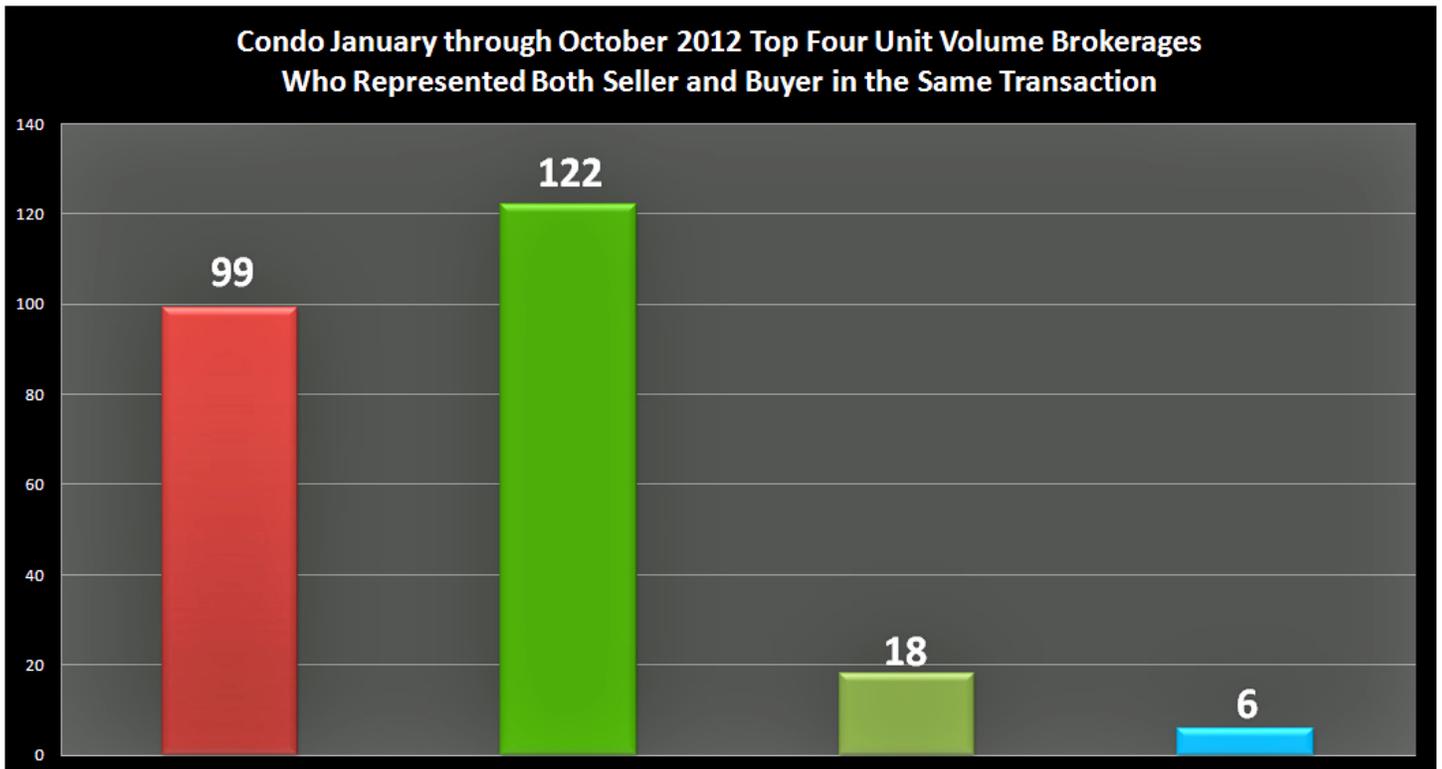
when selling my home in one day or less or before listed? I think you might want to ask yourself those questions too.

Now, I have worked for several "Big Boxes" and I am not going to name them but these Brokerages often have a couple of hundred agents or more. Not all, but some of them often will circulate "Pre-Listings" information sheets to its agents in advance of listing them into the Multiple Listing Service.

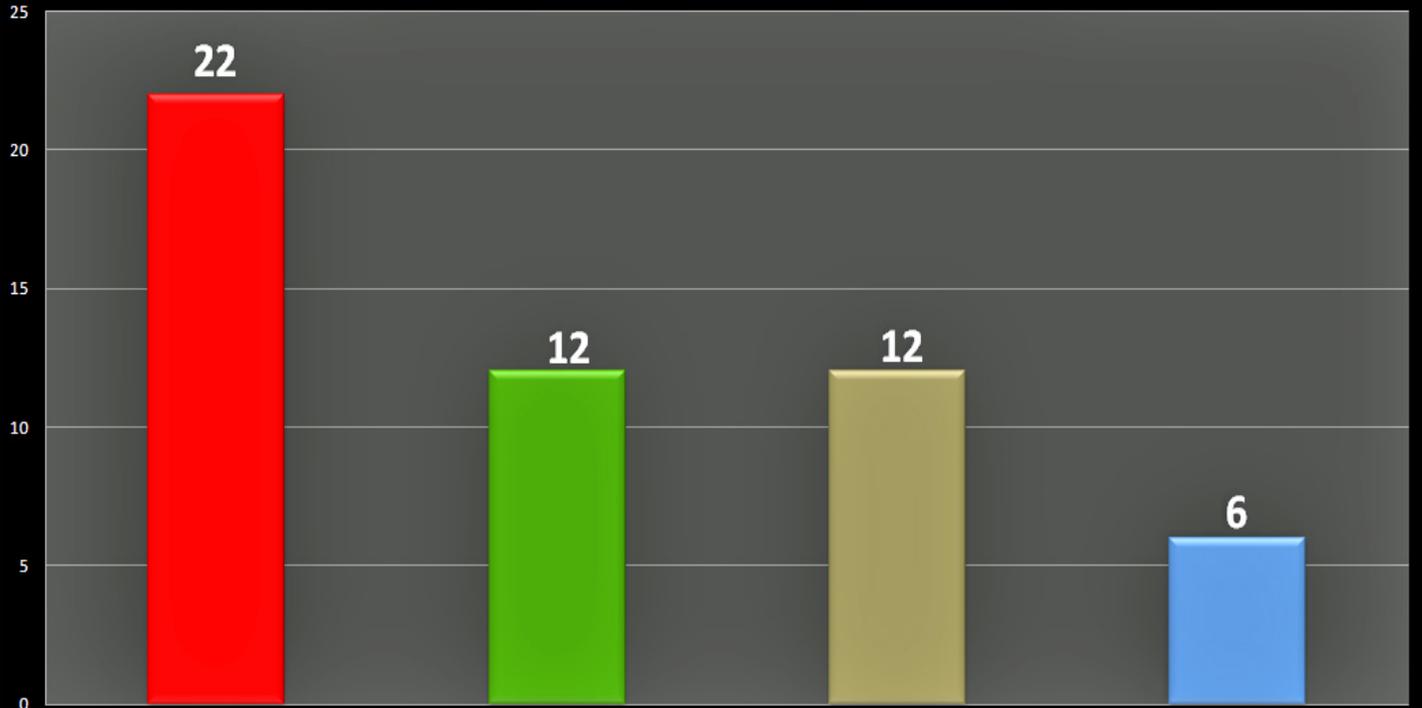
What does this do?

It gives the agents a Head Start in getting the Listing Sold as the announcement of a pending listing will motivate all the agents within the Brokerage to find buyers for the listing or they may already have one for a one of the Pre-Listings and ready to go.

It also perceptitates the ability of the Brokerage to make Double Commissions from the sale of listings as they get paid once from the listor and they get paid again if one of their agents brings the buyer.



**January through October 2012 Top Four Unit Volume Brokerages Dual Agency
Condo Sales/ Same Agent for both Seller and Buyer**

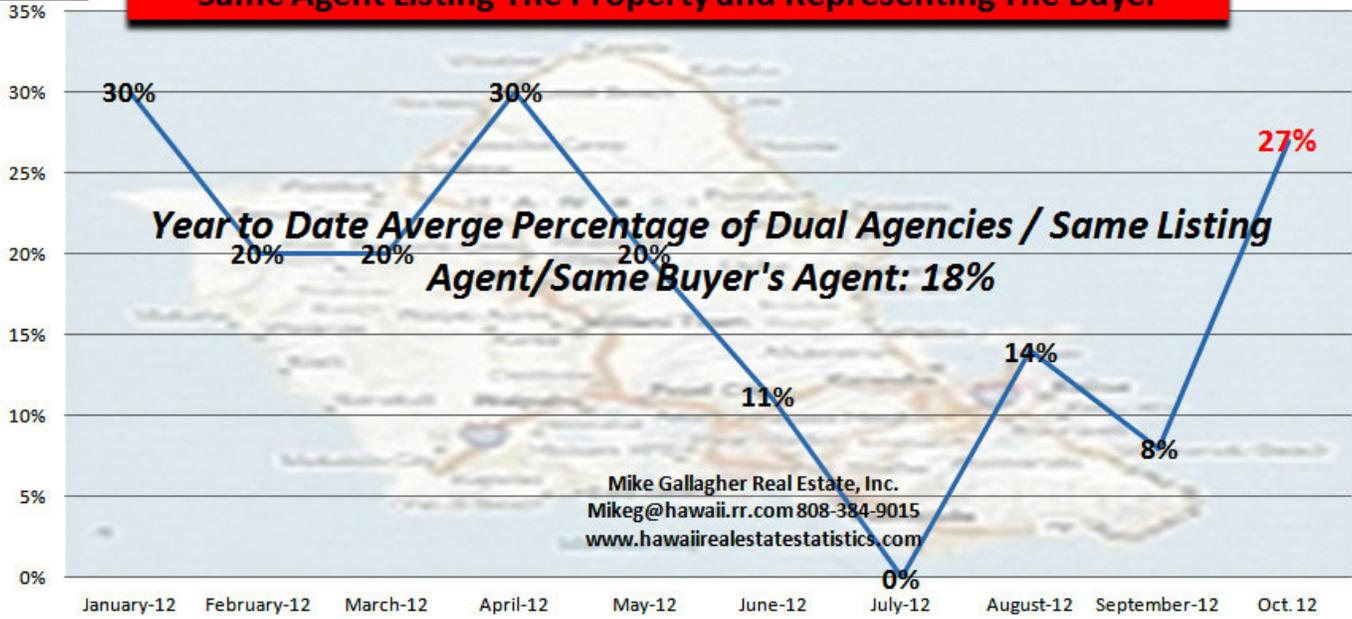


Oahu Condo October 2012 Homes Sold In One Day On The Market

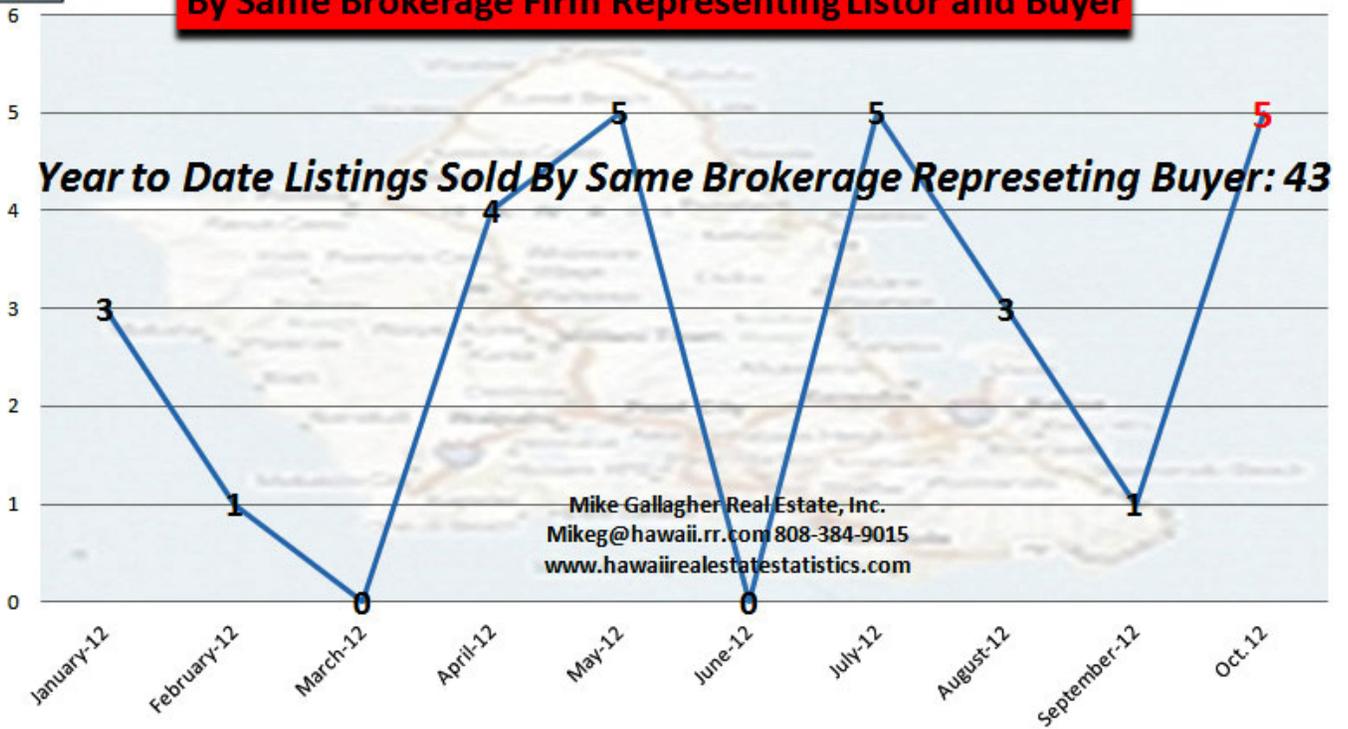




Oahu Condo October 2012 Homes Sold In One Day On The Market By Same Agent Listing The Property and Representing The Buyer

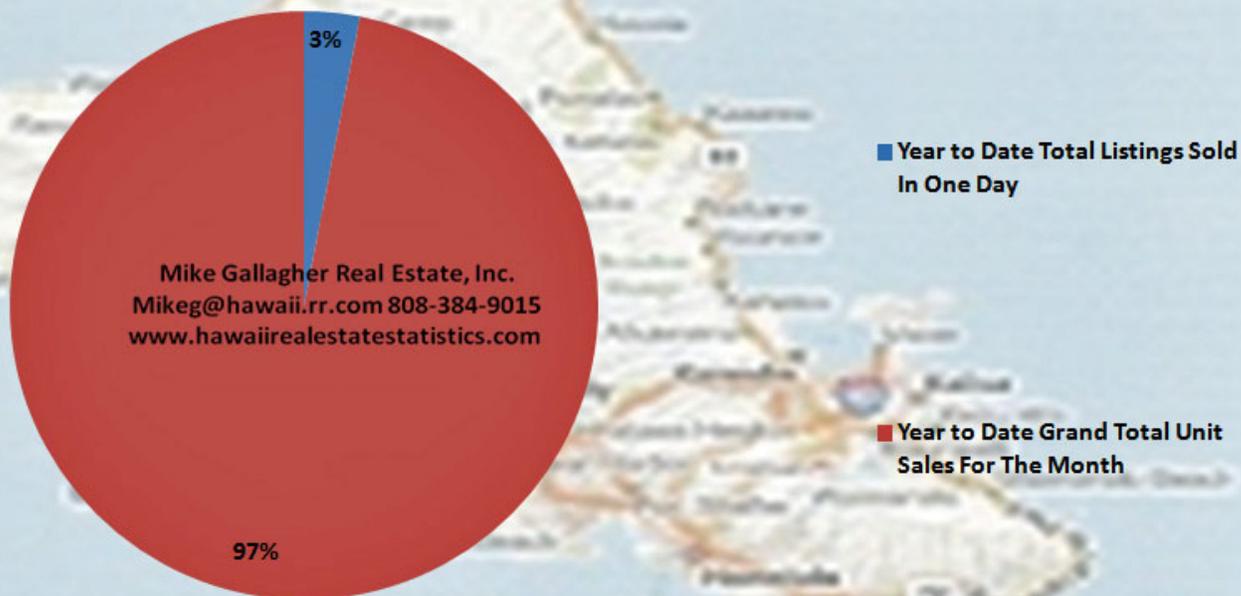


Oahu Condo October 2012 Homes Sold In One Day By Same Brokerage Firm Representing Listor and Buyer



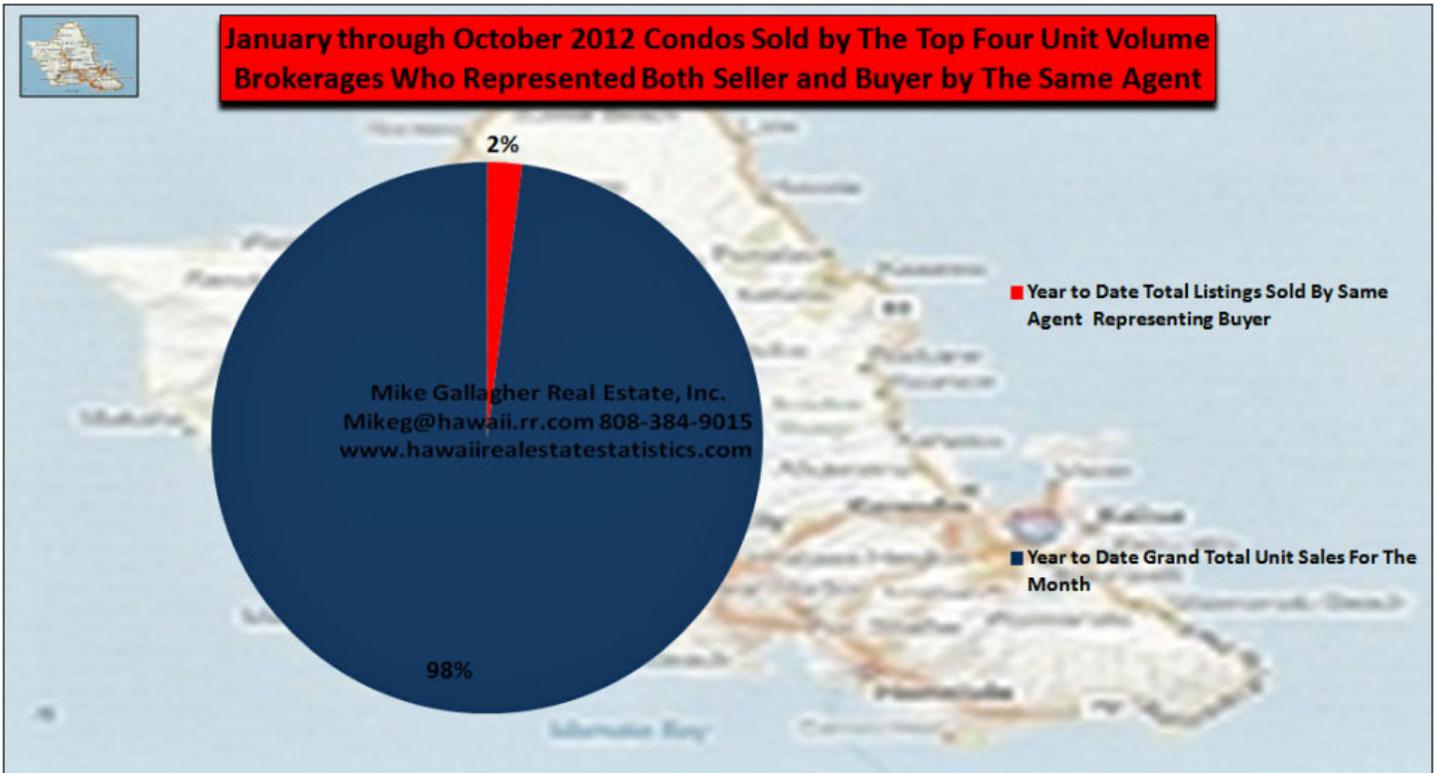


Oahu Condo October 2012 Year to Date Listings Sold In One Day vs. All Sold Listings



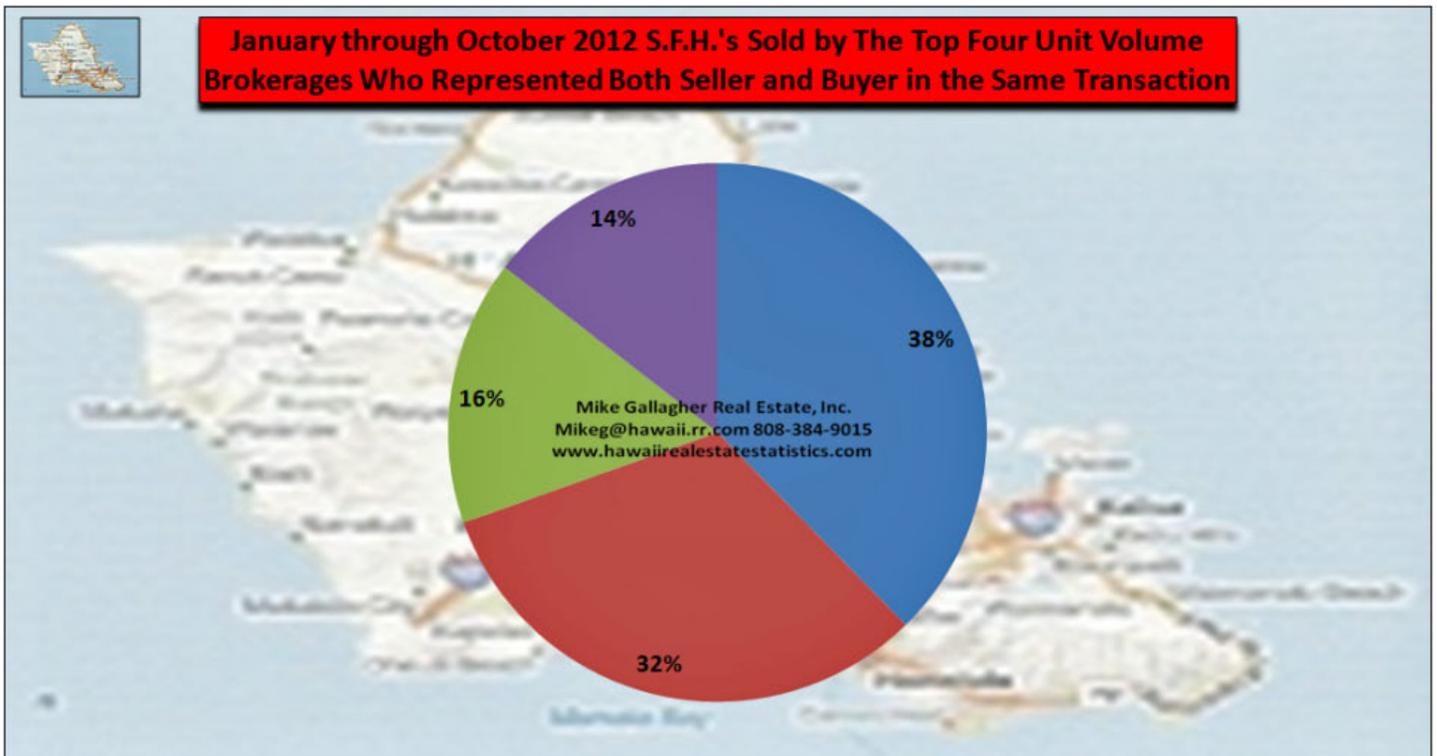
Oahu Condo October 2012 Year to Date Dual Agencies vs. Total Year to Date All Sold Listings

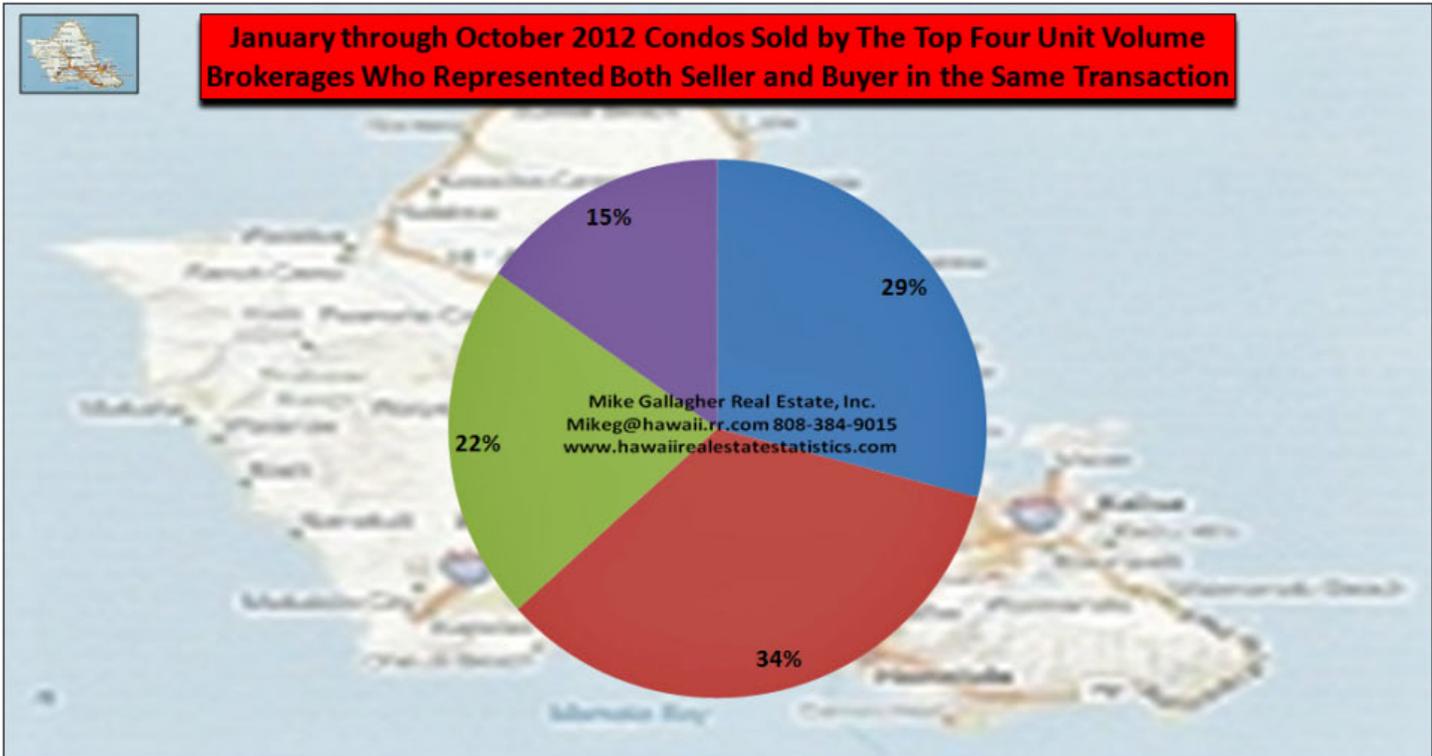




As we can see from all of the preceding Bar, Line and Pie Charts there really are not all that many Dual Agenices involved when you compare them to Grand Total Units Sold.

Where it also gets interesting is when we look at the results of those agents who choose to practice Pure Dual Agency:





These percentages are based upon total Pure Dual Agency Transactions versus their total Dual Agency listings. In these cases I think this is now what the Sellers and Buyers really need to know. These are large percentages.



Is Pure Dual Agency a Conflict of Interest?



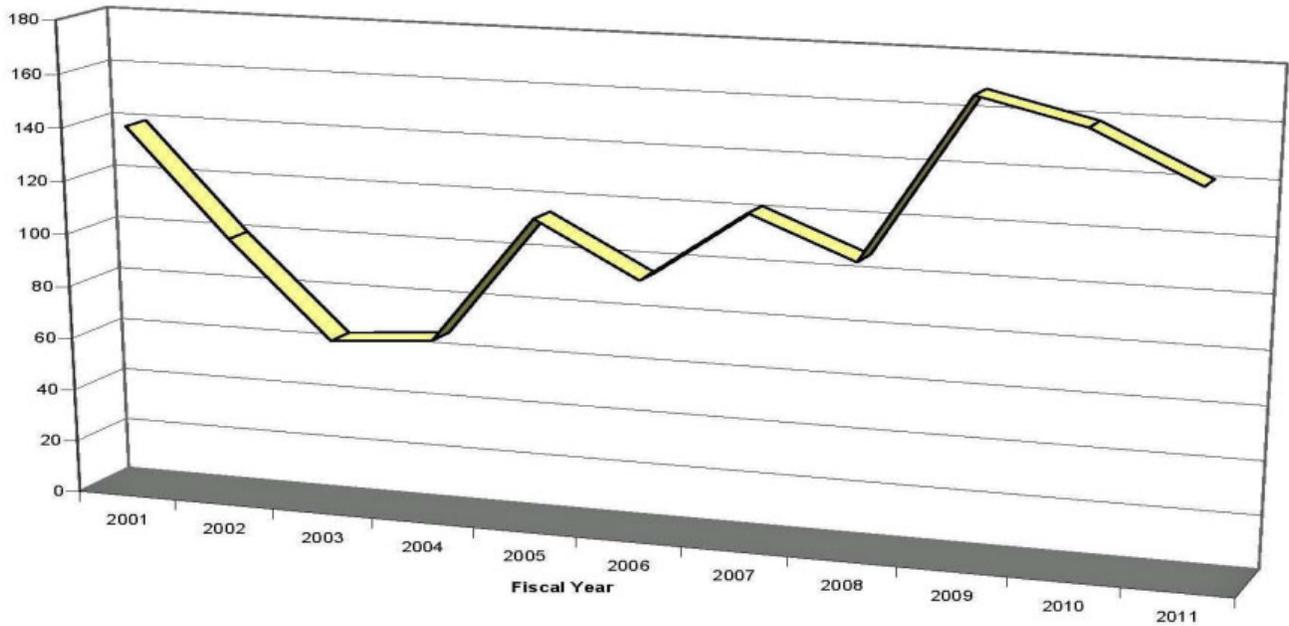
Is it Right or Wrong?



I hope the consequences of True, Pure Dual Agency is now clear to you.

There are over 8,000 Real Estate Agents in Hawaii with the majority of course on the Island of Oahu and according to the Annual Real Estate Commission Report issued for year 2011 Dual Agency was not an issue.

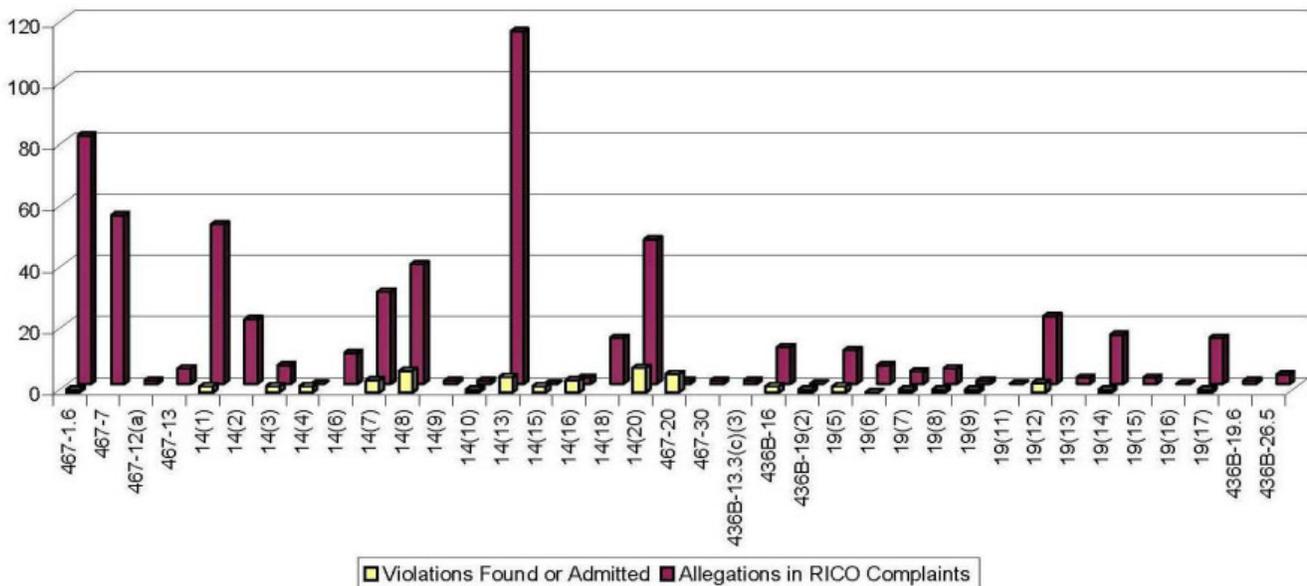
CHART 6. RICO Complaints (Real Estate FY 2001-2011)



	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Complaints	140	100	64	67	115	95	122	107	168	159	141

Overall complaints for the year 2011 were 141 but as we can see the number of complaints has in recent years been rising. You have to take into account that the number of sales has also been rising and with many Owners dissatisfied in losing equity, they might have a tendency to go after their Agents for their poor investment.

Chart 7. Statutory Violations (HRS Ch. 467 and 436B)



As for the types of violations we can see that Violations are significant although R.I.C.O. (The Racketeer Influenced and Corrupt Organizations Act) are few.

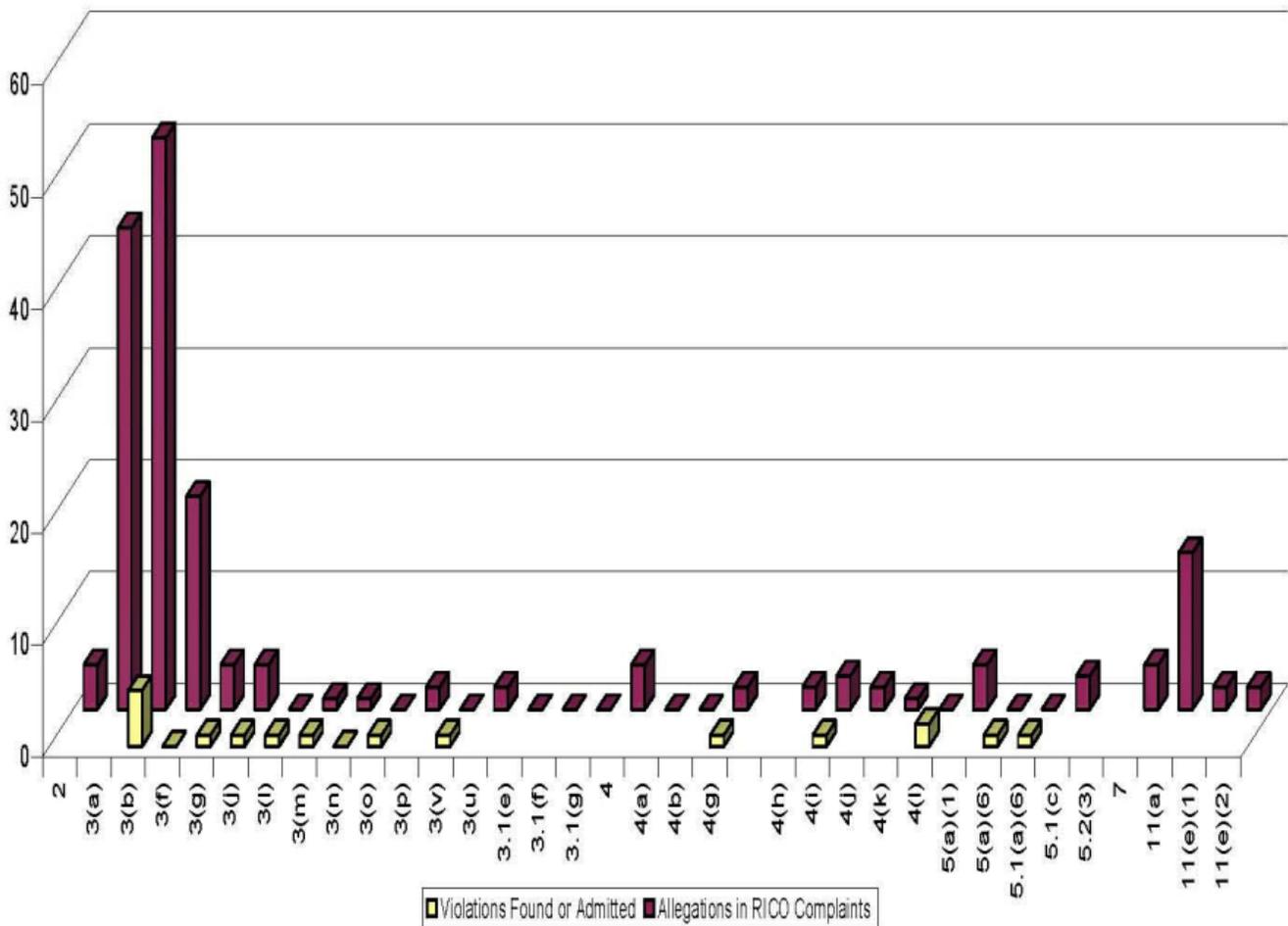
Below are the definitions of the Violations:

§467-13 Licensee shall deliver a copy of the agreement or contract to the parties signing it at the time the signature is obtained.

§467-1.6 Principal broker shall have direct management and supervision of the firm and its licensees.

§467-14(1) Making any misrepresentation concerning any real estate transaction.

Chart 8. Rules Violations (Chapter 99, HAR)



§16-99-3(a) Licensee shall fully protect the general public in its real estate transactions.

§16-99-3(b) Licensee shall protect the public against fraud, misrepresentation, or unethical practices in the real estate field.

§16-99-3(f) Licensee shall see that financial obligations and commitments are in writing.

§16-99-3(g) Licensee shall not acquire property without making the true position known in writing to the owner.

As you can see the most violations were in the 'making misleading representation concerning any Real Estate Transaction', 'licensee shall protect the Public against fraud, misrepresentation or unethical practices in the Real Estate field' and 'Licensee shall see that financial obligations and commitments are in writing.'

It might be construed that practicing pure Dual Agency may fall into one of these categories cited above but there are no specific entries for Dual Agency practices done by the Hawaii Real Estate Commission.

If you have questions about Realtors, use The Honolulu Board of Realtors website at: www.hicentral.com This page below is from this site and it tells us what a Realtor is and that they subscribe to a strict Code of Ethics.



The screenshot shows the website for the Honolulu Board of REALTORS®. The header includes the logo for the Honolulu Board of REALTORS® and the logo for CENTRAL PACIFIC HOMELOANS, with the tagline "Hawaii's Mortgage Experts". A search bar is located in the top right corner. The navigation menu includes: HOME, REALTOR® INFORMATION, PROPERTY INFORMATION, ESSENTIAL INFORMATION, ABOUT HBR, RESOURCES, and MEMBER LOGIN. The main content area is titled "What is a REALTOR®?" and contains the following text:

A REALTOR® is an individual licensed to list and sell real estate **and** is also a member of a local board of REALTORS®, the state association of REALTORS® and the National Association of REALTORS®—unlike real estate agents who are simply licensed by their state to do business. As a member of these three professional trade associations, a REALTOR® agrees to adhere to a strict Code of Ethics, the canons of professional behavior that guide daily activities in the real estate business.

The REALTOR® Privilege

A REALTOR® is the recognized professional in real estate. The distinctive REALTOR® "R" is your guarantee that you are dealing with the elite of the profession, a member of an association of REALTORS® and a professional who deserves your trust.

On Oahu, to earn the title of REALTOR®, a person must be licensed to list and sell real estate and be a member of the Honolulu Board of REALTORS® (members automatically gain membership in the Hawaii Association of REALTORS® and the National Association of REALTORS®). The term "REALTOR®" is a federally registered trademark to identify and distinguish members from all other persons, licensed or unlicensed, engaged in the real estate business and is associated with a high degree of professionalism, training, integrity and expertise in the real estate industry.

A REALTOR® pledges fidelity to clients, but also pledges to treat honestly all parties to a real estate transaction. A REALTOR® is knowledgeable about various aspects of

Code of Ethics and Standards of Practice of the NATIONAL ASSOCIATION OF REALTORS®

Effective January 1, 2012

Where the word REALTORS® is used in this Code and Preamble, it shall be deemed to include REALTOR-ASSOCIATE®s.

While the Code of Ethics establishes obligations that may be higher than those mandated by law, in any instance where the Code of Ethics and the law conflict, the obligations of the law must take precedence.

Preamble

Under all is the land. Upon its wise utilization and widely allocated ownership depend the survival and growth of free institutions and of our civilization. REALTORS® should recognize that the interests of the nation and its citizens require the highest and best use of the land and the widest distribution of land ownership. They require the creation of adequate housing, the building of functioning cities, the development of productive industries and farms, and the preservation of a healthful

Accepting this standard as their own, REALTORS® pledge to observe its spirit in all of their activities whether conducted personally, through associates or others, or via technological means, and to conduct their business in accordance with the tenets set forth below. (Amended 1/07)

Duties to Clients and Customers

Article 1

When representing a buyer, seller, landlord, tenant, or other client as an agent, REALTORS® pledge themselves to protect and promote the interests of their client. This obligation to the client is primary, but it does not relieve REALTORS® of their obligation to treat all parties honestly. When serving a buyer, seller, landlord, tenant or other party

http://www.hicentral.com/images/Documents/2012_coe.pdf

Unfortunately, out of the 8,000+ Agents in Hawaii only a small percentage are members of their Local Board of Realtors which leaves a majority of Agents out there who do not have to subscribe to the Code of Ethics nor its Disciplinary Findings and Actions.

So what do you do ask when you are thinking about what Agent to use in your next endeavor? I would use the Honolulu Board of Realtors website (www.hicentral.com) and the Real Estate Commission Website where you can also check for any complaints. (<http://pvl.ehawaii.gov/pvlsearch/app>)

Hawaii.gov
Official site for the State of Hawaii

STATE OF HAWAII
1959

Department of Commerce & Consumer Affairs (DCCA)

You are here: Home » Functional Areas » Professional and Vocational Licensing (PVL) Search » Search

MAILING ADDRESS:
P.O. Box 3469
Honolulu, HI 96801

STREET ADDRESS:
335 Merchant St
3rd Floor Room 301
Honolulu, HI 96813

PVL Home
Tell us what you think
Disclaimer
Privacy Policy
Home - DCCA

OFFLINE
Live Chat
Technical Support

Technical Help Desk:
808-695-4620

General Licensing Info:
808-586-3000

Hours of Operation (HST):
7:45 a.m. - 4:30 p.m.

Professional and Vocational Licensing (PVL) Search - Search

This search is designed to help the public obtain basic information about businesses and individuals that hold professional and vocational licenses issued by the State of Hawaii.

Note: You must click the appropriate submit query button to run the search

Search by License Number

License Type* (Look up Codes->) & License Number(s)
(Separate multiple license numbers by commas.)

License Type -

* all contractors are of license type "CT".

Search by Business Name or Individual*

* For Individuals, search by Last Name First Name Middle Initial order without commas. You may enter partial information for your search criteria such as Last Name and part of the First Name:

There are of course always new agents coming into the field of Real Estate Sales and this begs the question "How long have you been in the business?" Just ask and listen to what the agent tells you.

If you want to know the 'Best Practice' in asking a prospective agent what they know, then instead of asking "How long have you been in the business?" instead ask "How many Transactions have you had, where were these transactions, have you had any Dual Agencies?" or better yet, ask for their **Transaction Report** since the beginning of their licensure. This report is available to every agent and can be easily provided to you.



Table 2. Real Estate Licensing Examination

	FY 2010	FY 2011	% Change
Brokers Tested	777	620	-20.2%
Salespersons Tested	3285	3410	3.8%
Total Tested	4062	4030	-0.8%
Brokers Passed	353	286	-19.0%
Salespersons Passed	1479	1657	12.0%
Total Passed	1832	1943	6.1%
% Brokers Pass	45.4%	46.1%	
% Salespersons Pass	45.0%	48.6%	

In looking at the Pass/Fail rates we see that in reviewing year 2011 there were 3,410 Want to be Salespersons tested and 1,657 passed which is a 51% pass percentage. I have to tell you I took this test way, way back in year 2000 and it is not all that hard.

In looking at the Pass/Fail rates we see that in reviewing year 2011 there were 620 Broker Want to Be tested and 286 passed which is a pass percentage of 54%. I would hope that this percentage is higher as a Broker licensee you have already had years of

experience and should be familiar with the testing in order to supervise agents in our Brokerage. I have to be honest here, I know friends in the Industry and they passed their Brokers Test on the first try. I commend them. I had to take it twice. This test is tough, especially when it comes to the myriad amount of State and Federal Laws you have to know.

In summation, Dual Agency and pure Dual Agency are both common practices in the Real Estate Sales field and I believe as a prospective Seller or Buyer, you should answer the question yourself "What should I do if I am asked to sign a Dual Agency Consent Form?" It is entirely up to you.

I hope that you have enjoyed reading this report. If you any questions please feel free to contact me.

If you really want to have the 'straight info' on what is really happening in Hawaii Real Estate you will be refreshed by visiting my website and speaking to me, as I tell it like it is.

I have been in this business for twelve years and I have helped buy and sell many homes for my clients. My references and knowledge are both excellent.

If you have the time please visit my website for a wealth of information on the Oahu Real Estate Market and read my Monthly articles on Time/Warners Oceanic Cable:
www.aroundhawaii.com



AroundHawaii

www.hawaii realestate statistics.com

www.aroundhawaii.com

You may also want to visit at my website to learn more about various other Neighborhoods around the Island and see the comprehensive report for Oahu. A quick trip there will provide you with a wealth of Real Estate knowledge you never before even knew was available.



I plan on doing short videos for each of the Major Areas on Oahu highlighting quickly the numbers and nuances in each of the Areas.

If you have any questions or need specific, detailed reports generated for you for any Neighborhood, Area or Condo Building, Town Home Complex on Oahu, just send me an email with your request.

I wish you all much Aloha and I also want to wish everyone a **"Very, Merry Christmas"** and a **"Happy New Year!"** (I have never been Politically Correct!)

Until next time, be safe, enjoy and take care of one another!

Mike Gallagher, Mike Gallagher Real Estate, Inc.-Principal Broker 808-384-9015
mikeg@hawaii.rr.com