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# A BILL FOR AN ACT

RELATING TO EXCLUSIVE LISTING AGREEMENTS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1 SECTION 1. This Act shall be known, and may be cited, as  
2 the Exclusive Listing Agreements Act.

3 SECTION 2. The legislature finds that companies across the  
4 United States have been targeting vulnerable property owners to  
5 sign long-term exclusive listing agreements in exchange for a  
6 nominal payment upfront and recording these agreements as liens  
7 on the property. These complex contracts are essentially high-  
8 interest loans that make selling, refinancing, or transferring  
9 real estate difficult for property owners, and can deprive  
10 property owners of the equity in their property. Many property  
11 owners who sign exclusive listing agreements may not be fully  
12 aware of the impact of these agreements on their property rights  
13 and the rights of future owners of the property, including  
14 family members who inherit the property. Investigations and  
15 lawsuits from other states assert that companies are deceptively  
16 advertising their agreements' terms and failing to fully  
17 disclose the terms to property owners.



1           The legislature further finds that there is a growing trend  
2 among state legislatures to ban exclusive listing agreements.  
3 Since 2021, consumer protection advocates and real estate and  
4 title industry representatives have worked to ban predatory  
5 exclusive listing agreements in fifteen states. The legislature  
6 recognizes that long-term exclusive listing agreements, and the  
7 recording of exclusive listing agreements as liens, could have a  
8 devastating impact on Hawaii's property owners by unfairly  
9 encumbering a property owner's title, reducing the property  
10 owner's equity, and having an anti-competitive effect on the  
11 sale of real property in Hawaii. Property owners who are  
12 subject to unfair and deceptive business practices involving  
13 exclusive listing agreements should be provided appropriate and  
14 reasonable remedies such as obtaining a court order declaring  
15 the agreement to be void and unenforceable and recovering  
16 damages.

17           Accordingly, the purpose of this Act is to prevent unfair  
18 exclusive listing agreements from becoming prevalent in the  
19 State by:

20           (1) Making certain long-term exclusive listing agreements  
21           for the sale of residential real property void and



1 unenforceable under the state law that governs unfair  
2 and deceptive practices;

3 (2) Prohibiting the recording or filing of exclusive  
4 listing agreements of any duration with the bureau of  
5 conveyances; and

6 (3) Establishing certain remedies for persons who are  
7 subject to unfair exclusive listing agreements.

8 SECTION 3. Chapter 481B, Hawaii Revised Statutes, is  
9 amended by adding a new section to part I to be appropriately  
10 designated and to read as follows:

11 "§481B- Exclusive listing agreements; prohibited. (a)  
12 An exclusive listing agreement shall be void and unenforceable  
13 under this chapter if the agreement:

14 (1) Lasts longer than twelve months from the date the  
15 agreement was made;

16 (2) Purports to run with the land or be binding on future  
17 owners of interests in the real property;

18 (3) Allows for assignment of the right to provide services  
19 without notice to and the consent of the owner of the  
20 residential real property; or



1       (4) Purports to create a lien, encumbrance, or other real  
2           property security interest.

3       (b) It shall be unlawful to present for recording or  
4 filing, or otherwise attempt to record to file, with the bureau  
5 of conveyances an exclusive listing agreement of any duration or  
6 any memoranda or notice of an exclusive listing agreement.

7       (c) It shall be unlawful to enforce, or attempt to  
8 enforce, an exclusive listing agreement that is made, or that is  
9 presented for recording or filing with the bureau of  
10 conveyances, in violation of this section.

11       (d) An exclusive listing agreement that is made or  
12 presented for recording or filing with the bureau of conveyances  
13 in violation of this section shall not be enforceable, have any  
14 legal effect, or provide actual or constructive notice to any  
15 person interested in the residential real property that is  
16 identified in the exclusive listing agreement.

17       (e) An exclusive listing agreement that is made or is  
18 presented for recording or filing with the bureau of conveyances  
19 in violation of this section shall not operate as a lien,  
20 encumbrance, or security interest.



1       (f) No owner or buyer shall be required to record any  
2 document to remove an exclusive listing agreement that is made  
3 or is presented for recording or filing with the bureau of  
4 conveyances in violation of this section.

5       (g) If an exclusive listing agreement, memorandum of the  
6 agreement, or notice is recorded in violation of this section,  
7 then a person with an interest in the real property that is  
8 subject to the agreement may apply to a court of competent  
9 jurisdiction in the county where the real property is located to  
10 record a court order declaring the agreement, memorandum of  
11 agreement, or notice void and unenforceable.

12       (h) A violation of this section shall be deemed an unfair  
13 or deceptive practice in accordance with section 480-2, and  
14 shall be subject to the provisions of chapter 480, as well as  
15 the provisions of this chapter.

16       (i) In addition to any other rights provided by law, any  
17 person with an interest in real property identified by a  
18 recording that is void and unenforceable under subsection (a)  
19 may recover damages, costs, and attorney's fees that may be  
20 proved against the service provider named in the void exclusive  
21 listing agreement. Any actual damages, costs, and attorney's



1 fees that are proved against the service provider shall not be  
2 offset by the consideration paid by the service provider to the  
3 owner of the real property.

4 (j) A service provider has no right to a refund of the  
5 consideration paid to the owner in connection with a void  
6 exclusive listing agreement.

7 (k) For the purposes of this section:

8 "Exclusive listing agreement" means a contract or agreement  
9 providing an exclusive right to list or sell residential real  
10 property, including a contract or agreement to enter into an  
11 agreement or arrangement.

12 "Residential real property" means real property located in  
13 the State that is used primarily for personal, family, or  
14 household purposes and consists of one to four dwelling units.

15 "Service provider" means a legal person, including an  
16 entity or organization, who provides a service related to real  
17 property, including a real estate broker or real estate  
18 salesperson. For purposes of this definition, "real estate  
19 broker" and "real estate salesperson" have the same meaning as  
20 defined in section 467-1."

21 SECTION 4. New statutory material is underscored.



1 SECTION 5. This Act shall take effect on November 1, 2024.



**Report Title:**

Exclusive Listing Agreements; Residential Real Property;  
Prohibitions; Bureau of Conveyances; Unfair or Deceptive  
Practices; Remedies

**Description:**

Makes certain long-term exclusive listing agreements for the  
sale of residential real property void and unenforceable under  
the state law that governs unfair and deceptive practices.  
Prohibits the recording or filing of exclusive listing  
agreements of any duration with the Bureau of Conveyances.  
Establishes certain remedies. Takes effect 11/1/2024. (CD1)

*The summary description of legislation appearing on this page is for informational purposes only and is  
not legislation or evidence of legislative intent.*

