

**PRESENTATION OF THE
REAL ESTATE COMMISSION**

TO THE HOUSE COMMITTEE ON
CONSUMER PROTECTION AND COMMERCE
AND
TO THE HOUSE COMMITTEE ON JUDICIARY

TWENTY-FIFTH LEGISLATURE
Regular Session of 2009

Monday, February 2, 2009
2:00 p.m.

TESTIMONY ON HOUSE BILL NO. 51 – RELATING TO REAL ESTATE BROKERS.

TO THE HONORABLE ROBERT N. HERKES, CHAIR, AND
TO THE HONORABLE JON RIKI KARAMATSU, CHAIR,
AND MEMBERS OF THE COMMITTEES:

My name is Trudy Nishihara and I am the Chairperson of the Hawaii Real Estate Commission ("Commission"). The Commission appreciates the opportunity to provide testimony on House Bill No. 51. This bill proposes to prohibit the licensure of any individual applying for a real estate broker's license who has been convicted in any state or country of a felony involving intent to defraud or misrepresent. Although the measure's underlying intent is worthy, the Commission has concerns with this bill.

First, the Commission would like to apprise the Committees that there are already laws in place that allow the Commission the ability to deny a license to any real estate applicant for the exact reason, as covered in this bill. The Commission may deny a license to "Any person who does not possess a reputation for or record of competency, honesty, truthfulness, financial integrity, and fair dealing;" and for "any license for . . . [a] criminal conviction, whether by nolo contendere or otherwise, of a penal crime directly related to the qualifications, functions, or duties of the licensed profession or vocation." (See HRS §§467-8(a)(3) and 436B-19(14)). The Commission

reviews applicants with questionable backgrounds, with these laws in mind and uses its discretion as to whether to license or not license an individual. The Commission has in fact denied licensure to individuals on these bases.

This proposed measure however, removes the Commission's discretionary authority and restricts the Commission from issuing a license. This would appear unreasonably restrictive where in some cases (as the Commission has experienced) there is successful rehabilitation.

The other concern with this bill is that it is only applicable to broker applicants, yet the Commission licenses several other license types. It is also only applicable to acquiring a license, not for renewing a license.

Lastly, the only way for complete and accurate disclosure to be made by the applicant is to require that they obtain a criminal history records check. The Commission is looking at this issue but further research is needed to determine whether that is feasible and without adverse impacts. Until then, as we do currently, we rely on complete and accurate disclosure by the applicant. Further, we have exercised the ability to discipline a licensee when false information or the failure to disclose information is found. Clearly the Commission's office does not have the resources to do background checks, and it is not alone in relying on the applicant's honesty and truthfulness, as other licensing areas do the same.

Based on the above concerns, the Commission would suggest that this bill be deferred for further discussion. Thank you for the opportunity to present testimony.



The REALTOR® Building
1136 12th Avenue, Suite 220
Honolulu, Hawaii 96816

Phone: (808) 733-7060
Fax: (808) 737-4977
Neighbor Islands: (888) 737-9070
Email: har@hawaiiirealtors.com

January 30, 2009

The Honorable Robert N. Herkes, Chair
House Committee on Consumer Protection & Commerce
The Honorable Jon Riki Karamatsu, Chair
House Committee on Judiciary
State Capitol, Room 325
Honolulu, Hawaii 96813

RE: H.B. 51 Relating to Real Estate Brokers

Aloha Chair Herkes, Chair Karamatsu, and Members of the Joint Committees on Consumer Protection & Commerce and Judiciary,

On behalf of our 9,600 members in Hawai'i, the Hawai'i Association of REALTORS® (HAR) submits comments on H.B. 51.

This measure creates a new provision in HRS §467-8 to prohibit persons convicted of felonies involved in fraud and misrepresentation from holding a real estate license in Hawai'i.

HAR believes that a screening process should exist for real estate license applicants, but defers to the Hawai'i Real Estate Commission on the parameters for such a screening process.

Currently, the Real Estate Commission has the power to grant, deny, suspend, terminate, or revoke a real estate license. As part of the application process, the Real Estate Commission encourages applicants with potentially questionable backgrounds to request a preliminary decision with respect to that background and give the applicant a fair indication as to how the Commission might vote on the application. The Real Estate Commission describes such questionable background issues on its application as follows:

Questionable background issues include, but [are] not limited to, criminal convictions (felony, misdemeanor, or court martial), or any civil/administrative/government action, against you, including DUIs, drug/alcohol issues, abuse situations, tax liens, unpaid tax obligations, judgments, unpaid judgments, disciplinary action (for another licensing area or from another state or country), applicants currently serving parole or probation, violations of administrative laws/court orders/government sanctions, etc.

In addition to fraud or misrepresentation, the Real Estate Commission monitors and screens for a wide range of potentially adverse past histories that may adversely affect consumers. In addition, the Real Estate Commission has the power to revoke, suspend,



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Email: har@hawaii Realtors.com

or fine licensees for any “conduct constituting fraudulent or dishonest dealings” or for “failure to maintain a reputation for or record of competency, honesty, truthfulness, financial integrity, and fair dealing. Haw. Rev. Stat. § 467-14.

HAR looks forward to working with our state lawmakers in building better communities by supporting quality growth, seeking sustainable economies and housing opportunities, embracing the cultural and environmental qualities we cherish, and protecting the rights of property owners.

Mahalo for the opportunity to testify.