

JAN 25 2012

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# A BILL FOR AN ACT

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RELATING TO REAL ESTATE BROKERS AND SALESPERSONS.

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

SECTION 1. Section 467-14, Hawaii Revised Statutes, is amended to read as follows:

**"§467-14 Revocation, suspension, and fine.** In addition to any other actions authorized by law, the commission may revoke any license issued under this chapter, suspend the right of the licensee to use the license, fine any person holding a license, registration, or certificate issued under this chapter, or terminate any registration or certificate issued under this chapter, for any cause authorized by law, including but not limited to the following:

(1) ~~[Making]~~ Negligently or intentionally making any misrepresentation concerning any real estate transaction;

(2) ~~[Making]~~ Negligently or intentionally making any false promises concerning any real estate transaction of a character likely to mislead another;



1           (3) Pursuing a continued and flagrant course of  
2           misrepresentation, or making of false promises through  
3           advertising or otherwise;

4           (4) Without first having obtained the written consent to  
5           do so of both parties involved in any real estate  
6           transaction, acting for both the parties in connection  
7           with the transaction, or collecting or attempting to  
8           collect commissions or other compensation for the  
9           licensee's services from both of the parties;

10          (5) When the licensee, being a real estate salesperson,  
11          accepts any commission or other compensation for the  
12          performance of any of the acts enumerated in the  
13          definition set forth in section 467-1 of real estate  
14          salesperson from any person other than the real estate  
15          salesperson's employer or the real estate broker with  
16          whom the real estate salesperson associates or, being  
17          a real estate broker or salesperson, compensates one  
18          not licensed under this chapter to perform any such  
19          act;

20          (6) When the licensee, being a real estate salesperson,  
21          acts or attempts to act as a real estate broker or  
22          represents, or attempts to represent, any real estate



1 broker other than the real estate salesperson's  
2 employer or the real estate broker with whom the real  
3 estate salesperson is associated;

4 (7) Failing, within a reasonable time, to account for any  
5 moneys belonging to others that may be in the  
6 possession or under the control of the licensee;

7 (8) Any other conduct constituting fraudulent or dishonest  
8 dealings;

9 (9) When the licensee, being a partnership, permits any  
10 member of the partnership who does not hold a real  
11 estate broker's license to actively participate in the  
12 real estate brokerage business thereof or permits any  
13 employee thereof who does not hold a real estate  
14 salesperson's license to act as a real estate  
15 salesperson therefor;

16 (10) When the licensee, being a corporation, permits any  
17 officer or employee of the corporation who does not  
18 hold a real estate broker's license to have the direct  
19 management of the real estate brokerage business  
20 thereof or permits any officer or employee thereof who  
21 does not hold a real estate salesperson's license to  
22 act as a real estate salesperson therefor;



1       (11) When the licensee, being a real estate salesperson,  
2               fails to file with the commission a written statement  
3               setting forth the name of the real estate broker by  
4               whom the licensee is employed or with whom the  
5               licensee is associated;

6       (12) When the licensee fails to obtain on the contract  
7               between the parties to the real estate transaction  
8               confirmation of who the real estate broker represents;

9       (13) Violating this chapter; chapter 484, 514A, 514B, 514E,  
10              or 515; section 516-71; or the rules adopted pursuant  
11              thereto;

12      (14) Splitting fees with or otherwise compensating others  
13              not licensed hereunder for referring business;  
14              provided that notwithstanding paragraph (5), a real  
15              estate broker may pay a commission to:

16            (A) A licensed real estate broker of another state,  
17                territory, or possession of the United States if  
18                that real estate broker does not conduct in this  
19                State any of the negotiations for which a  
20                commission is paid;

21            (B) A real estate broker lawfully engaged in real  
22                estate brokerage activity under the laws of a



1 foreign country if that real estate broker does  
2 not conduct in this State any of the negotiations  
3 for which a commission is paid; or

4 (C) A travel agency that in the course of business as  
5 a travel agency or sales representative, arranges  
6 for compensation the rental of a transient  
7 vacation rental; provided that for purposes of  
8 this paragraph "travel agency" means any person  
9 that, for compensation or other consideration,  
10 acts or attempts to act as an intermediary  
11 between a person seeking to purchase travel  
12 services and any person seeking to sell travel  
13 services, including an air or ocean carrier;

14 (15) Commingling the money or other property of the  
15 licensee's principal with the licensee's own;

16 (16) Converting other people's moneys to the licensee's own  
17 use;

18 (17) The licensee is adjudicated insane or incompetent;

19 (18) [~~Failing~~] Negligently or intentionally failing to  
20 ascertain and disclose all material facts concerning  
21 every property for which the licensee accepts the  
22 agency, so that the licensee may fulfill the



1 licensee's obligation to avoid [~~error,~~  
2 ~~misrepresentation,~~] negligent or intentional errors,  
3 misrepresentations, or concealment of material facts;  
4 provided that for the purposes of this paragraph, the  
5 fact that an occupant has AIDS or AIDS Related Complex  
6 (ARC) or has been tested for HIV (human  
7 immunodeficiency virus) infection shall not be  
8 considered a material fact;

9 (19) When the licensee obtains or causes to be obtained,  
10 directly or indirectly, any licensing examination or  
11 licensing examination question for the purpose of  
12 disseminating the information to future takers of the  
13 examination for the benefit or gain of the licensee;

14 (20) Failure to maintain a reputation for or record of  
15 competency, honesty, truthfulness, financial  
16 integrity, and fair dealing; or

17 (21) Acquiring an ownership interest, directly or  
18 indirectly, or by means of a subsidiary or affiliate,  
19 in any distressed property that is listed with the  
20 licensee or within three hundred sixty-five days after  
21 the licensee's listing agreement for the distressed  
22 property has expired or is terminated.



1 As used in this section, "distressed property" has the same  
2 meaning as set forth in section 480E-2.

3 Disciplinary action may be taken by the commission whether  
4 the licensee is acting as a real estate broker, or real estate  
5 salesperson, or on the licensee's own behalf."

6 SECTION 2. Statutory material to be repealed is bracketed  
7 and stricken. New statutory material is underscored.

8 SECTION 3. This Act shall take effect upon its approval.  
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INTRODUCED BY:

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# S.B. NO. 3002

**Report Title:**

Real Estate Brokers and Salespersons; Licensing and Penalties

**Description:**

Clarifies the language regarding the licensing penalties of real estate brokers and salespersons. Allows the real estate commission to revoke, suspend, or fine any person holding a real estate license, registration, or certificate for negligently or intentionally making misrepresentations or false promises concerning any real estate transaction or negligently or intentionally failing to disclose certain information.

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

