
A BILL FOR AN ACT

RELATING TO REAL ESTATE.

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

1 SECTION 1. The legislature finds that some owners in
2 condominiums and time share projects have experienced
3 difficulties receiving association-related documents in a timely
4 manner.

5 The purpose of this Act is to:

6 (1) Specify that the principal broker in a brokerage firm
7 is responsible for ensuring that:

8 (A) Associated real estate licensees and other staff
9 who assist common interest communities are
10 responsive to requests from owners regarding
11 association-related finances, documents, records,
12 and information; and

13 (B) Any request from the real estate commission to
14 distribute commission-generated information,
15 materials, or documents to an association, a
16 board of directors, or a unit owner in a common



1 interest community is completed within ten days
2 after receiving the request; and

3 (2) Clarify that any violation of a mandatory provision of
4 the State's condominium law by a board or its officers
5 and members is a per se violation of the board's
6 fiduciary duty, but providing a safe harbor provision
7 for a board member who votes for compliance during a
8 board meeting.

9 SECTION 2. Section 467-1.6, Hawaii Revised Statutes, is
10 amended by amending subsection (b) to read as follows:

11 "(b) The principal broker shall be responsible for:

12 (1) The client trust accounts, disbursements from those
13 accounts, and the brokerage firm's accounting
14 practices;

15 (2) The brokerage firm's records, contracts, and
16 documents;

17 (3) All real estate contracts of the brokerage firm and
18 its handling by the associated real estate
19 salesperson;

20 (4) The proper handling of any commission application,
21 real estate license application, or renewal



1 application that the principal broker or the brokerage
2 firm expressly agrees to handle on behalf of the
3 applicant, including without limitation, verifying for
4 completeness and appropriate fees, and mailing or
5 delivering the appropriate documents to the commission
6 by the required deadline;

- 7 (5) Developing policies and procedures for the brokerage
8 firm concerning the handling of real estate
9 transactions and the conduct of the associated real
10 estate licensees and other staff, including education
11 and enforcement of the policies and procedures;
- 12 (6) Setting a policy on continuing education requirements
13 for all associated real estate licensees in compliance
14 with the statutory requirement;
- 15 (7) Ensuring that the licenses of all associated real
16 estate licensees and the brokerage firm license are
17 current and active;
- 18 (8) Establishing and maintaining a training program for
19 all associated real estate licensees; [and]
- 20 (9) Ensuring that all associated real estate licensees are
21 provided information and training on the latest



1 amendments to real estate licensing laws and rules as
2 well as other related laws and rules[-];

3 (10) Ensuring that all associated real estate licensees and
4 other staff who assist in providing management
5 services for common interest communities, including
6 but not limited to cooperative housing corporations
7 under chapter 421I, planned community associations
8 under chapter 421J, associations of unit owners under
9 chapter 514B, and time sharing plans under chapter
10 514E, are responsive to requests for finances,
11 documents, records, and information, whether
12 maintained, kept, or required to be provided pursuant
13 to chapter 421I, 421J, 514B, or 514E; and

14 (11) Ensuring that any request from the commission to
15 distribute any commission-generated information,
16 printed material, or documents to an association, the
17 board of directors of an association, or unit owners,
18 shall be completed within ten days of receiving the
19 request."

20 SECTION 3. Section 514B-106, Hawaii Revised Statutes, is
21 amended by amending subsection (a) to read as follows:



1 "(a) Except as provided in the declaration, the bylaws,
2 subsection (b), or other provisions of this chapter, the board
3 may act in all instances on behalf of the association. In the
4 performance of their duties, officers and members of the board
5 shall owe the association a fiduciary duty and exercise the
6 degree of care and loyalty required of an officer or director of
7 a corporation organized under chapter 414D. A violation of any
8 mandatory provision of this chapter by a board or its officers
9 and members shall be deemed a per se violation of the fiduciary
10 duty owed pursuant to this subsection; provided that a board
11 member may avoid liability under this subsection by voting
12 against a board action that is in violation of a mandatory
13 provision of this chapter and having that board member's vote
14 recorded in the minutes of a regular or special meeting of the
15 board within forty-five days of the occurrence of the
16 violation."

17 SECTION 4. Statutory material to be repealed is bracketed
18 and stricken. New statutory material is underscored.

19 SECTION 5. This Act shall take effect upon its approval.

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Report Title:

Real Estate Licensees; Common Interest Communities; Principal Brokers; Documents, Records, and Information; Real Estate Commission; Board of Directors; Fiduciary Duty

Description:

Requires principal brokers in a brokerage firm to ensure that: associated real estate licensees and other staff who assist in providing management services for common interest communities are responsive to requests from owners regarding association-related finances, documents, records, and information; and any request from the real estate commission to distribute commission-generated information, materials, or documents to an association, a board of directors, or a unit owner in a common interest community is completed within ten days after receiving the request. Clarifies that any violation of a mandatory provision of the State's condominium law by a board or its officers and members is a per se violation of the board's fiduciary duty. Provides safe harbor for a board member who votes for compliance during a board meeting. (SD1)

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