**S.B. NO.** <sup>2861</sup> S.D. 1 H.D. 1 C.D. 1

## A BILL FOR AN ACT

RELATING TO EXCLUSIVE LISTING AGREEMENTS.

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

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

3 The legislature finds that companies across the SECTION 2. 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 highinterest loans that make selling, refinancing, or transferring 8 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 advertising their agreements' terms and failing to fully 16 17 disclose the terms to property owners.



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

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

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



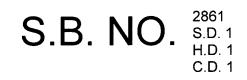
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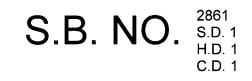
1		unenforceable under the state law that governs unfair
2		and deceptive practices;
3	(2)	Prohibiting the recording or filing of exclusive
4		listing agreements of any duration with the bureau of
5		conveyances; and
6	(3)	Establishing certain remedies for persons who are
7		subject to unfair exclusive listing agreements.
8	SECT	ION 3. Chapter 481B, Hawaii Revised Statutes, is
9	amended b	y adding a new section to part I to be appropriately
10	designated and to read as follows:	
11	" <u>§</u> 48	<b>1B-</b> Exclusive listing agreements; prohibited. (a)
11 12		<b>1B- Exclusive listing agreements; prohibited.</b> (a) ive listing agreement shall be void and unenforceable
	An exclus	
12	An exclus	ive listing agreement shall be void and unenforceable
12 13	<u>An exclus</u> under thi	ive listing agreement shall be void and unenforceable s chapter if the agreement:
12 13 14	<u>An exclus</u> under thi	ive listing agreement shall be void and unenforceable s chapter if the agreement: Lasts longer than twelve months from the date the
12 13 14 15	<u>An exclus</u> under thi <u>(1)</u>	ive listing agreement shall be void and unenforceable s chapter if the agreement: Lasts longer than twelve months from the date the agreement was made;
12 13 14 15 16	<u>An exclus</u> under thi <u>(1)</u>	ive listing agreement shall be void and unenforceable s chapter if the agreement: Lasts longer than twelve months from the date the agreement was made; Purports to run with the land or be binding on future
12 13 14 15 16 17	<u>An exclus</u> under thi <u>(1)</u> <u>(2)</u>	<pre>ive listing agreement shall be void and unenforceable s chapter if the agreement: Lasts longer than twelve months from the date the agreement was made; Purports to run with the land or be binding on future owners of interests in the real property;</pre>

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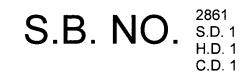
1	(4) Purports to create a lien, encumbrance, or other real
2	property security interest.
3	(b) It shall be unlawful to present for recording or
4	filing, or otherwise attempt to record to file, with the bureau
5	of conveyances an exclusive listing agreement of any duration or
6	any memoranda or notice 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.

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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

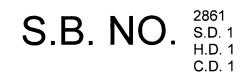




1	fees that are proved against the service provider shall not be
2	offset by the consideration paid by the service provider to the
3	owner of the real property.
4	(j) A service provider has no right to a refund of the
5	consideration paid to the owner in connection with a void
6	exclusive listing agreement.
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.

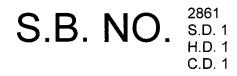
SECTION 4. New statutory material is underscored.





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)

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