

ACT 154

A Bill for an Act to Provide for Amendments and Additions to Chapter 170, Revised Laws of Hawaii 1955, as Amended: To Change the Name and Title of the Real Estate License Commission to "Real Estate Commission"; and to Provide for Regulations of Transactions Involving Real Estate Subdivisions.

Be it Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 170-1 of the Revised Laws of Hawaii 1955 as amended is hereby further amended by deleting paragraph (a) and substituting in its place the following:

"(a) 'Commission' means the Real Estate Commission of the State".

SECTION 2. Section 170-2 of the Revised Laws of Hawaii 1955 is hereby further amended by substituting for the words "Exceptions. The provisions of the chapter shall not apply:" the following words:

"Exceptions. The provisions requiring a person to be licensed as a real estate broker or salesman shall not apply:"

SECTION 3. Section 170-3 of the Revised Laws of Hawaii 1955 as amended is hereby further amended by deleting the following words "Section 80 of the Organic Act, a commission to be known as the real estate license commission" from lines 3 through 5 and substituting in place thereof the following words:

"Section 14A-3 of the Revised Laws of Hawaii 1955 as amended, a commission to be known as the Real Estate Commission."

SECTION 4. Section 170-4 of the Revised Laws of Hawaii 1955 is hereby amended by adding a new paragraph to read as follows:

"() Regulate transaction involving the sale, lease or transfer of lots or parcels in real estate subdivisions".

SECTION 5. Sections 170-()-1 through 170 ()-9 be added to the Revised Laws of Hawaii 1955 as amended to read as follows and to be preceded by a bold faced title:

"REGULATIONS OVER TRANSACTIONS INVOLVING REAL ESTATE SUBDIVISIONS.

Section 170 ()-1. Purpose. The purpose of Sections 170 ()-1 to 170 ()-8 is to prevent frauds, misrepresentations, failures to disclose material facts, and other dishonest practices in transactions involving real estate subdivisions by providing regulations over such transactions.

Section 170 ()-2. Definitions, as they apply to Sections 170 ()-1 to 170 ()-8.

(a) 'Subdivision' means a real estate subdivision: A plan or project whereby land or lands are divided or proposed to be divided into twenty or more lots for purpose of sale or lease for terms longer than twenty-five years; provided that this subsection shall be construed liberally to include all plans and projects regardless of the form in which they are organized or transacted, so long as their substantial effect or purpose come within the definitions.

(b) 'Developer' means a person who undertakes to develop a real estate subdivision.

(c) 'Person' means co-partnership, joint venture, corporation, company, and firm, as well as individual persons.

(d) 'Commission' means the Real Estate Commission of the State of Hawaii.

Section 170 ()-3. Registration of real estate subdivision. At least ten days prior to the time when any real estate subdivision is to be offered for sale or lease in this State or any other State, Territory or Country or when any plan or project situated in this State is to be offered for sale or lease, the developer shall register it with the commission by furnishing a subdivision map together with the following information and changes that may occur from time to time within ten days after the change occurs:

(a) The name, business and/or residence address of the developer.

(b) The name, business and/or residence address of all real estate brokers selling or leasing any parcels or lots in the real estate subdivision.

(c) The names of all financial institutions and persons with whom any payment made by the purchaser are to be kept.

(d) A brief but comprehensive statement of the land and locality on and in which the real estate subdivision is to be situated.

Section 170 ()-4. Meeting subdivision requirements. The developer shall not enter into a binding contract or agreement for the sale or lease of any parcel or lot in a real estate subdivision until all subdivision map requirements, zoning laws, building laws and all other federal, state, county or municipal laws and rules which are required to be complied with prior to sale or lease have been met.

Section 170 ()-5. Prerequisites to collection for a sale or lease. The developer shall not receive, charge, collect or demand any money or other consideration for a sale or lease of a lot or parcel in a real estate subdivision until one of the following conditions are complied with:

(a) A final approval by the county or city and county agency charged with the final approval of subdivisions together with a bond sufficient to cover the cost of putting in all of the improvements as is required by the agency giving the final approval; or

(b) The completion of all the improvements required by the agency giving the final approval; or

(c) The setting up of an escrow depository or trust account acceptable to the commission where all payments made by the purchasers are to be kept and applied solely toward the progress payments for materials, labor and other costs for the purpose of putting in all improvements required by the agency giving the final approval, provided that the escrow arrangement will be discontinued upon the improvements being completed.

Section 170 ()-6. Violations and enforcement. It is unlawful for any person, in connection with the offer, sale or lease of any lot or parcel in real estate subdivision to, directly or indirectly:

(a) Employ any device, scheme or artifice to defraud;

(b) Make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading;

(c) Engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person;

(d) To issue, circulate or publish any prospectus, circular, advertisement, printed matter, document, pamphlet, leaflet or other literature which shall con-

tain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein made in the light of the circumstances under which they are made, not misleading ;

(e) To issue, circulate or publish any advertising matter or make any written representation, unless the name of the person issuing, circulating, publishing, or making the same and the fact that such person is issuing, circulating, publishing or making the same shall be clearly indicated thereon ;

(f) To make any statement or representation, or issue, circulate or publish any advertising matter containing any statement to the effect that the plan or project has been in any way approved or endorsed by the commission ;

(g) To issue, circulate or publish any advertising matter unless a copy thereof shall have been previously filed with the commission ; or

(h) To, in any way, violate the provision of this act. Whoever violates any provision of the chapter shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than one year, or by both fine and imprisonment.

Section 170 ()-7. Power to investigate and enjoin. If the commission has received a written complaint or where it appears to the commission that a developer has violated any of the provisions of this act then the commission may examine the books, accounts, records and files used for the real estate subdivision upon reasonable notice and demand and if it finds from satisfactory evidence that any person has violated any of the provisions of this act it may bring an action in the name of the people of the State of Hawaii in any court of competent jurisdiction against such person to enjoin such person from continuing such violation or engaging therein or doing any act or acts in furtherance thereof.

Section 170 ()-8. Voiding of a contract. Any contract or agreement for the sale or lease of any parcel or lot in a real estate subdivision violating the provisions of sections 170 ()-4 through 170 ()-6 shall be void at the option of the purchaser and the purchaser upon the exercise of his option is entitled to all payments he has made to the developer, including interest.

Section 170 ()-9. Powers of Political subdivisions. Nothing contained in this act shall be construed to limit or restrict the powers of any county or city and county in the exercise of its police powers, including the power to adopt and enforce ordinances and regulations relating to the subdivision or consolidation of land.

SECTION 6. This Act shall take effect upon approval, provided however it shall not apply to existing real estate subdivisions having commenced sales or leases of its parcels or lots on or before January 1, 1962.

(Approved July 7, 1961.) H.B. 28.
