

ACT 197

H.B. NO. 259

A Bill for an Act Relating to Real Estate Brokers and Salesmen.

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

SECTION 1. Chapter 467, Hawaii Revised Statutes, is amended as follows:

1. By adding a new section to be appropriately designated and to read as follows:

“Sec. 467- Employer-employee relationship. Nothing in this chapter or in any of the rules adopted to implement this chapter shall be deemed to create an employer-employee relationship between a real estate broker and his licensees; provided that the commission shall have all power necessary to regulate the relationships, duties and liabilities among real estate brokers and real estate salesmen in order to protect the public.”

2. By amending in Section 467-1 the definition of “real estate salesman” to read:

“(3) “Real estate salesman” means any person who, for a compensation or valuable consideration, is employed either directly or indirectly by a real estate broker, or is an independent contractor in association with a real estate broker, to sell or offer to sell, buy or offer to buy, or list, or solicit for prospective purchasers, or who leases or offers to lease, or rents or offers to rent any real estate, or the improvements thereon, for others as a whole or partial vocation; or who secures, receives, takes, or accepts, and sells or offers to sell, any option on real estate

without the exercise by him of such option and for the purpose or as a means of evading the licensing requirements of this chapter. Every real estate salesman must be under the direction of a broker for all real estate transactions;"

3. Section 467-11 is amended to read:

"Sec. 467-11 Fees; original license and biennial renewals. The fee for any license prescribed by this chapter shall be as follows:

- (1) To act as a real estate broker, \$50, \$5 of which shall be deposited in the real estate education fund;
- (2) To act as a real estate salesman, \$50, \$5 of which shall be deposited in the real estate education fund;
- (3) Biennial renewal for broker, \$100, \$10 of which shall be deposited in the real estate education fund;
- (4) Biennial renewal for salesman, \$50, \$10 of which shall be deposited in the real estate education fund;
- (5) To obtain a branch office license, \$50;
- (6) To reinstate a suspended license, \$25;
- (7) Biennial renewal of inactive broker license, \$100, \$10 of which shall be deposited in the real estate education fund;
- (8) Biennial renewal of inactive salesman license, \$50, \$10 of which shall be deposited in the real estate education fund.

A fee of \$10 shall be charged for the reissuance of a lost license, or for the reissuance of license when there has been a change in the licensee's name or for the reissuance of license when there has been a change in the business address, or, in the case of a salesman, when he is either employed by or associated with a different broker.

The biennial renewal fee shall be paid to the real estate commission on or before December 31 of each even-numbered year. Failure, neglect, or refusal of any duly licensed real estate broker or real estate salesman to pay the biennial renewal fee shall constitute a forfeiture of the license of the broker or salesman. The license of the broker or salesman may be restored upon written application therefor and the payment to the commission of the delinquent fee and a penalty fee of \$10.

A broker or salesman may place his license on an inactive status upon payment of the proper fee, and such license may be renewed biennially on or before December 31 of each even-numbered year.

All fees and other moneys collected or received under this chapter shall be deposited by the director of regulatory agencies with the director of finance to the credit of the general fund.

The commission may refund any fee erroneously paid to it under the provisions of this section and section 467-9 when the commission deems it just and equitable."

4. Section 467-13 is amended to read:

"Sec. 467-13 Delivery of agreement. When a licensee prepares or has prepared an agreement authorizing the licensee to perform any of the acts for which he is required to hold a license, or when such license secures the signature

of any party or parties to any contract pertaining to such services or transaction, he shall deliver a copy of the agreement or contract to the party or parties signing it, at the time the signature is obtained; provided that only one copy need be delivered to parties signing as cotenants."

5. Section 467-14 is amended to read:

"Sec. 467-14 Revocation and suspension of licenses. The real estate commission may revoke any license issued hereunder, or suspend the right of the licensee to use the license, for any of the following causes:

- (1) Making any misrepresentation concerning any real estate transaction;
- (2) Making any false promises concerning any real estate transaction of a character likely to mislead another;
- (3) Pursuing a continued and flagrant course of misrepresentation, or making of false promises through advertising or otherwise;
- (4) Without first having obtained the written consent so to do of both parties involved in any real estate transaction, acting for both the parties in connection with the transaction, or collecting or attempting to collect commissions or other compensation for his services from both of such parties;
- (5) When licensee, being a real estate salesman, accepts any commission or other compensation for the performance of any of the acts hereinabove enumerated in the definition of real estate salesman from any person, copartnership, or corporation other than his employer or the broker with whom he associates or, being a real estate broker or salesman, compensates one not licensed under this chapter to perform any such act;
- (6) When the licensee, being a real estate salesman, acts or attempts to act as a real estate broker or represents, or attempts to represent, any real estate broker other than his employer or the broker with whom he is associated;
- (7) Failing, within a reasonable time, to account for any moneys belonging to others which may be in the possession or under the control of the licensee;
- (8) Any other conduct constituting fraudulent or dishonest dealings;
- (9) When the licensee, being a copartnership, permits any member of the copartnership who does not hold a real estate broker's license to actively participate in the real estate brokerage business thereof or permits any employee thereof who does not hold a real estate salesman's license to act as a real estate salesman therefor;
- (10) When the licensee, being a corporation, permits any officer or employee of the corporation who does not hold a real estate broker's license to have the direct management of the real estate brokerage business thereof or permits any officer or employee thereof who does not hold a real estate salesman's license to act as a real estate salesman therefor;
- (11) When the licensee, being a real estate salesman, fails to file with the commission a written statement setting forth the name of the real estate broker by whom he is employed or with whom he is associated;

- (12) Violating this chapter or the rules and regulations adopted pursuant thereto;
- (13) Splitting fees with or otherwise compensating others not licensed hereunder for referring business; provided that a licensed broker may pay a commission to a licensed broker of another state if such broker does not conduct in this State any of the negotiations for which a commission is paid;
- (14) Commingling the money or other property of his principal with his own;
- (15) Adjudicated insane or incompetent.

No license shall be suspended for longer than two years and no person whose license has been revoked shall be eligible to apply for a new license until the expiration of two years."

SECTION 2. Section 467-24, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 467-24 Maximum liability. Notwithstanding any other provision, the liability of the real estate recovery fund shall not exceed \$40,000 for any one licensee."

SECTION 3. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 4. This Act shall take effect upon its approval.

(Approved June 9, 1977.)

*Edited accordingly.