

ACT 116

S.B. NO. 1338

A Bill for an Act Relating to Real Estate.

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

SECTION 1. Section 467-8, Hawaii Revised Statutes, is amended to read as follows:

“**§467-8 Prerequisites for licensing.** No license hereunder shall be issued to:

- (1) Any person who does not satisfy the requirements set forth in section 467-9.5;

- (2) Any person unless he has demonstrated by passing with a grade satisfactory to the real estate commission a written examination appropriate to the license sought that he has a reasonable knowledge of (A) estates, interests, and rights in real property, (B) the documents or acts or occurrences by which such property is transferred or otherwise affected, (C) the rights and duties of an agent, (D) the laws of the State relating to real estate brokers and salesmen, and (E) such other subjects as the commission determines to be essential for the protection of the general public in its real estate transactions;
- (3) Any person who does not possess a [good character and] reputation for honesty, truthfulness, and fair dealing;
- (4) Any copartnership unless every member of the copartnership who actively participates in the real estate brokerage business thereof holds a real estate broker's license;
- (5) Any corporation unless the real estate brokerage business thereof is under the direct management of an officer or employee thereof and unless the officer or employee holds a real estate broker's license."

SECTION 2. Section 467-9, Hawaii Revised Statutes, is amended to read as follows:

"§467-9 License; applications and fees. Every applicant for issuance of a real estate license under this chapter shall file an application with the real estate commission in such form and setting forth such information as may be prescribed or required by the commission, and shall furnish such additional information bearing upon the issuance of the license as it requires. Every application shall be sworn to before an officer authorized to administer oaths. In the case of a copartnership or corporation any member or officer thereof may sign the application and verify the same on behalf of the applicant. The commission may prescribe deadlines for the submission of applications.

[Every application, in the case of an individual, shall be accompanied by sworn certificates of not less than two persons who have known the applicant for a period of not less than six months, certifying that the applicant bears a good reputation for honesty, truthfulness, and fair dealing.

Every application for issuance of a real estate license hereunder shall be accompanied by an issuance fee of \$25 and other applicable fees authorized by this chapter. The application fee for issuance of license is nonrefundable.]"

SECTION 3. Section 467-9.5, Hawaii Revised Statutes, is amended to read as follows:

"§467-9.5 Prerequisites for written examination. No person shall be eligible for the written examination unless:

- (1) The person is a legal resident of the State and is of the age of majority;
- (2) The person applying for the real estate salesman examination has satisfactorily completed a course on real estate principles or its equivalent, approved or accredited by the real estate commission;

- (3) The person applying for the real estate broker examination has satisfactorily completed a course for real estate brokers, or its equivalent, approved or accredited by the real estate commission;
- (4) The person applying for the real estate broker examination (A) has previously been licensed as a Hawaii real estate salesman, and (B) has previously been engaged in the real estate business as a licensed Hawaii real estate salesman for a period of two years on a full-time basis, [or] and has practical experience in the real estate field as determined by the commission. The commission may waive all or a portion of the two years' experience, if the person has had other experience or education in the selling or management of real estate, which, in the opinion of the commission, is equivalent to two years' experience to be established by detailed explanatory affidavit or in such other manner as may be determined by the commission.

Each person shall certify on the application for examination that the prerequisites set forth above have been or will be satisfied prior to the date of examination. The examination score of any person who has taken the written examination without having satisfied the prerequisites set forth above shall be voided."

SECTION 4. Section 467-11, Hawaii Revised Statutes, is amended to read as follows:

"§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[.], and satisfaction of such other requirements as the commission may impose as a condition to restoration.

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 commerce and consumer affairs 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."

SECTION 5. Section 467-16, Hawaii Revised Statutes, is amended to read as follows:

"§467-16 Real estate recovery fund; use of fund; fees. The real estate commission shall establish and maintain a real estate recovery fund from which any person aggrieved by an act, representation, transaction, or conduct of a duly licensed real estate broker, or real estate salesman, upon the grounds of fraud, misrepresentation, or deceit, may recover by order of the circuit court or district court of the county where the violation occurred, an amount of not more than [10,000]¹ \$25,000 per transaction for damages sustained by the fraud, misrepresentation, or deceit, including court costs and fees as set by law, and reasonable attorney fees as determined by the court.

When any person makes application for an original license to practice as a real estate broker or salesman he shall pay, in addition to his original license fee, a fee of \$50 for deposit in the real estate recovery fund. If the commission does not issue the license, this fee shall be returned to the applicant."

SECTION 6. Section 467-17, Hawaii Revised Statutes, is amended to read as follows:

"§467-17 Additional payments to fund. (a) If [, on December 31, of any year,] the balance remaining in the real estate recovery fund is less than [\$150,000,] \$350,000, the department of commerce and consumer affairs shall assess every real estate licensee [broker, when renewing his license during the following calendar year, shall pay, in addition to his license renewal fee,] a license fee of \$25 for deposit in the real estate recovery fund[, and every real estate salesman, when renewing his license during such year, shall pay, in addition to his license renewal fee, a fee of \$15 for deposit in the real estate recovery fund].

(b) The failure of the licensee to pay the assessment within sixty days from the date of assessment shall constitute a forfeiture of the license. The commission may impose other penalties or requirements as a condition to restoration of the license."

SECTION 7. Section 467-24, Hawaii Revised Statutes, is amended to read as follows:

“§467-24 Maximum liability. Notwithstanding any other provision, the liability of the real estate recovery fund shall not exceed [\$40,000] \$50,000 for any one licensee.”

SECTION 8. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 9. Statutory material to be repealed is bracketed. New material is underscored.

SECTION 10. This Act shall take effect upon its approval.

(Approved May 25, 1983.)

Note

1. “\$” missing.