

ACT 141

S.B. NO. 1178

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 by adding a new section to be appropriately designated and to read as follows:

“§467- Licenses and bonding required to operate condominium hotel. (a) As used in this section, “condominium hotel” includes those apartments in a project as defined in section 514A-3 and subject to chapter 514A, providing for customary hotel services including, but not limited to, front desk, restaurant, daily maid and linen service, bell service, or telephone switchboard.

(b) Any sole proprietor, partnership, corporation, or other business entity who, in the operation of a condominium hotel engages in any activity set forth in the definitions of “real estate”, “real estate broker”, and “real estate salesman” in section 467-1 and who also is not a custodian or caretaker shall obtain a license as a real estate broker in compliance with this chapter and the rules of the commission, and shall provide evidence of bonding to the real estate commission in an amount equal to \$500 multiplied by the aggregate number of units covered by all of the broker’s condominium hotel contracts; except that the minimum of the bond required by this subsection shall not be less than \$20,000 nor greater than \$100,000. The bond shall protect the owners of the apartments whose apartments are used to provide customary hotel services.

(c) Neither a real estate broker license nor a salesperson license shall be required of those employees of any sole proprietor, partnership, corporation, or other business entity performing or facilitating the delivery of customary hotel services as described in this section.”

SECTION 2. Section 467-1, Hawaii Revised Statutes, is amended to read as follows:

“§467-1 Definitions. As used in this chapter:

[(1)] “Commission” means the real estate commission of the State.

“Custodian or caretaker” means any person, who for compensation or valuable consideration, is employed either directly or indirectly by a single owner and has the responsibility to manage or care for that real property left in the person’s trust; provided that the term “custodian” or “caretaker” shall not include any person who leases or offers to lease, or rents or offers to rent, any real estate for more than a single owner; provided further that a single owner shall not include an association of owners of a condominium, cooperative or planned unit development.

“Hotel” includes a structure or structures used primarily for the business of providing transient lodging for periods of less than thirty days and which furnishes customary hotel services including, but not limited to, front desk, restaurant, daily maid and linen service, bell service, or telephone switchboard; provided that for the purposes of this chapter, apartments in a project as defined by section 514A-3 that provide customary hotel services shall be excluded from the definition of hotel. The definition of hotel as set forth in this section shall be in addition to and supplement the definition of “hotel” as set forth in the various county ordinances.

“Real estate” means and includes lands, the improvements thereon, leaseholds, and all other interests in real property. It shall be immaterial that a transaction also involves property other than real estate, as for example a transaction for the sale of an ongoing business, an asset of which consists of a leasehold or other interest in real property. In such a case, to the extent that real estate is involved, it shall be considered a real estate transaction for the purpose of this definition.

[(2)] “Real estate broker” means and includes any person, copartnership, or corporation, who for compensation or a valuable consideration, sells or offers to sell, buys or offers to buy, or negotiates the purchase or sale or exchange of real estate, or lists, or solicits 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 the option and for the purpose or as a means of evading the licensing requirement of this chapter[;].

[(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.

[(4)] “Real estate” means and includes lands, the improvements thereon, leaseholds, and all other interests in real property. It shall be immaterial that a transaction also involves property other than real estate, as for example a transaction for the sale of a going business, an asset of which consists of a leasehold or other interest in real property. In such a case, to the extent that real estate is involved, it shall be considered a real estate transaction for the purpose of this definition.

(5) "Custodian or caretaker" means any person, who for compensation or valuable consideration, is employed either directly or indirectly by a single owner and has the responsibility to manage or care for that real property left in his trust; provided that the term "custodian" or "caretaker" shall not include any person who leases or offers to lease, or rents or offers to rent, any real estate for more than a single owner; provided further, that a single owner shall not include an association of owners of a condominium, cooperative or planned unit development.]"

SECTION 3. Section 467-2, Hawaii Revised Statutes, is amended to read as follows:

"§467-2 Exceptions. The provisions requiring a person to be licensed as a real estate broker or salesman shall not apply:

- (1) To any person who, as owner of any real estate or acting under power of attorney from the owner, performs any of the acts enumerated in the definitions of real estate broker and real estate salesman with reference to such real estate; provided that the term "owner" as used in this [part] paragraph shall not include any person engaged in the business of real estate development or brokerage or include such person who acquires any interest in any real estate for the purpose or as a means of evading the licensing requirements of this chapter; and provided further[,] that the term person "acting under power of attorney" as used in this [part] paragraph shall not include any person engaged in the business of real estate development or brokerage or such person who acts under a power of attorney for the purpose or as a means of evading the licensing requirements of this chapter;
- (2) To any person acting as a receiver, trustee in bankruptcy, personal representative, or trustee acting under any trust agreement, deed of trust, or will, or otherwise acting under any order of authorization of any court;
- (3) To any person who leases, offers to lease, rents, or offers to rent, any real estate or the improvements thereon of which he is the custodian or caretaker[.];
- (4) To any person who manages, rents, or operates a hotel."

SECTION 4. Section 467-14, Hawaii Revised Statutes, is amended to read as follows:

"§467-14 Revocation and suspension of licenses. The real estate commission may revoke any license issued [hereunder,] under this chapter, 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 the licensee, being a real estate salesman, accepts any commission or other compensation for the performance of any of the acts [hereinafter] enumerated in the definition set forth in section 467-1 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, chapter 484, 514A, 514E, or 515, or the rules adopted pursuant thereto;
- (13) Splitting fees with or otherwise compensating others not licensed hereunder for referring business; provided that notwithstanding paragraph (5), a licensed broker may pay a commission to:
 - (A) A licensed broker of another state, territory, or possession of the United States[; or] if such broker does not conduct in this State any of the negotiations for which a commission is paid;
 - (B) A broker lawfully engaged in brokerage activity under the laws of a foreign country if such broker does not conduct in this State any of the negotiations for which a commission is paid; or
 - (C) A travel agency that in the course of business as a travel agency or sales representative, arranges for compensation the rental of transient vacation rental; provided that for purposes of this paragraph "travel agency" means any sole proprietorship, organization, trust, group, association, partnership, corporation, society, or combination of such, which for compensation or other consideration, acts or attempts to act as an intermediary between a person seeking to purchase travel services and any person seeking to sell travel services, including an air or ocean carrier;

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(14) Commingling the money or other property of his principal with his own; or

(15) [Adjudicated] The licensee is 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 5. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 6. This Act shall take effect upon its approval.

(Approved May 29, 1985.)

Note

1. Edited pursuant to HRS §23G-16.5.