

A Bill for an Act Relating to Real Estate.

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

SECTION 1. 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 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 compensation¹ the licensee's services from both of such parties;
- (5) When the licensee, being a real estate salesperson, accepts any commission or other compensation for the performance of any of the acts enumerated in the definition set forth in section 467-1 of real estate salesperson from any person, copartnership, or corporation other than the salesperson's employer or the broker with whom the salesperson associates or, being a real estate broker or salesperson, compensates one not licensed under this chapter to perform any such act;
- (6) When the licensee, being a real estate salesperson, acts or attempts to act as a real estate broker or represents, or attempts to represent, any real estate broker other than the salesperson's employer or the broker with whom the salesperson 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 salesperson's license to act as a real estate salesperson 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 salesperson's license to act as a real estate salesperson therefor;
- (11) When the licensee, being a real estate salesperson, fails to file with the commission a written statement setting forth the name of the real estate broker by whom the licensee is employed or with whom the licensee is associated;
- (12) When the licensee fails to obtain on the contract between the parties to the real estate transaction confirmation of who the broker represents;

- (13) Violating this chapter, chapter 484, 514A, 514E, or 515, or the rules adopted pursuant thereto;
- (14) 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 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;
- (15) Commingling the money or other property of the licensee's principal with the licensee's own;
- (16) Converting other people's moneys to the licensee's own use;
- (17) The licensee is adjudicated insane or incompetent[.]; and
- (18) Failing to ascertain and disclose all material facts concerning every property for which the licensee accepts the agency, so that the licensee may fulfill the licensee's obligation to avoid error, misrepresentation, or concealment of material facts; provided that for the purposes of this paragraph, the fact that an occupant has AIDS, AIDS Related Complex (ARC) or has been tested for HIV (human immunodeficiency) infection shall not be considered a material fact.

Disciplinary action may be taken by the commission whether the licensee is acting as a real estate broker, or salesperson, or on the licensee's own behalf.

No licensee¹ 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 514A-82, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) In addition to the requirements of subsection (a) the bylaws shall provide for:

- (1) The method of removal from office of directors; that at any regular or special meeting of the apartment owners, any one or more members of the board of directors may be removed by the apartment owners and successors shall then and there be elected for the remainder of the term to fill the vacancies thus created. Such removal and replacement shall be in accordance with all applicable requirements and procedures in the bylaws for the removal and replacement of directors, including, but not limited to, any provisions relating to cumulative voting. If such removal and replacement is to occur at a special association meeting, the call for such meeting shall be by the president or by a petition to the secretary or managing agent signed by not less than twenty-five per cent of the apartment owners as shown in the association's record

of ownership; and provided further that if the secretary or managing agent shall fail to send out the notices for the special meeting within fourteen days of receipt of the petition, then the petitioners shall have the authority to set the time, date and place for the special meeting and to send out the notices for the special meeting in accordance with the requirements of the bylaws. Except as otherwise provided herein, such meeting for the removal and replacement from office of directors shall be scheduled, noticed, and conducted in accordance with the bylaws of the association.

- (2) The bylaws may be amended at any time by the vote or written consent of sixty-five per cent of all apartment owners; provided that each one of the particulars set forth in this section shall be embodied in the bylaws always; and provided further that any proposed bylaws with the rationale for the proposal may be submitted by the board of directors or by a volunteer apartment owners' committee. If submitted by that committee, it shall be accompanied by a petition signed by not less than twenty-five per cent of the apartment owners as shown in the association's record of ownership. The proposed bylaws, rationale, and ballots for voting on any proposed bylaw shall be mailed by the board of directors to the owners at the expense of the association for vote or written consent without change within thirty days of the receipt of the petition by the board of directors. The vote or written consent required to adopt the proposed bylaw shall not be less than sixty-five per cent of all apartment owners; provided that the vote or written consent must be obtained within one hundred twenty days after mailing. In the event that the bylaw is duly adopted, then the board shall cause the bylaw amendment to be recorded in the bureau of conveyances or filed in the land court, as the case may be. The volunteer apartment owners' committee shall be precluded from submitting a petition for a proposed bylaw which is substantially similar to that which has been previously mailed to the owners within one year after the original petition was submitted to the board. This subsection shall not preclude any apartment owner or voluntary apartment owners' committee from proposing any bylaw amendment at any annual association meeting.
- (3) Notices of association meetings, whether annual or special, shall be sent to each member of the association of apartment owners at least fourteen days prior to the meeting, and shall contain at least: the date, time, and place of the meeting, the items on the agenda for the meeting, and a standard proxy form authorized by the association, if any; and
- (4) No resident manager, or managing agent shall solicit, for use by the manager or managing agent, any proxies from any apartment owner of the association of owners which employs the resident manager or managing agent, nor shall the resident manager or managing agent cast any proxy vote at any association meeting except for the purpose of establishing a quorum. No member of a board of directors who uses association funds to solicit proxies shall cast any of these proxy votes for the election or reelection of board members at any association meeting unless the proxy form specifically authorizes the board member to vote for the election or reelection of board directors and the board first posts notice of its intent to solicit proxies in prominent locations within the project at least thirty days prior to its solicitation of proxies; provided that if the board receives within seven days of the posted notice a request by any owner for use of association funds to solicit proxies accompanied by a statement, the board shall:

- (A) Mail to all owners a proxy form containing either the names of all owners who have requested the use of association funds for soliciting proxies accompanied by their statements; or
- (B) Mail to all owners a proxy form containing no names, but accompanied by a list of names of all owners who have requested the use of association funds for soliciting proxies and their statements.

The statement shall not exceed one hundred words, indicating the owner's qualifications to serve on the board and reasons for wanting to receive proxies.

- (5) The apartment owners shall have the irrevocable right, to be exercised by the board of directors, to have access to each apartment from time to time during reasonable hours as may be necessary for the operation of the property or for making emergency repairs therein necessary to prevent damage to the common elements or to another apartment or apartments.

The provisions of this subsection [(b)] shall be deemed incorporated into the bylaws of all condominium projects existing as of January 1, 1988, and all condominium projects created after that date."

SECTION 3. Section 514A-83.1, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) All meetings of the board of directors,¹ other than executive sessions, shall be open to all members of the association, [provided that] and association members who are not on the board of directors may [not] participate in any deliberation or discussion, other than executive sessions, unless [expressly so authorized by the vote of] a majority of a quorum of the board of directors[.] votes otherwise."

SECTION 4. Section 514A-83.2, Hawaii Revised Statutes, is amended to read as follows:

"**§514A-83.2 Proxies.** (a) A proxy, to be valid, must be delivered to the secretary of the association of apartment owners or the managing agent, if any, no later than 4:30 p.m. on the second business day prior to the date of the meeting to which it pertains, and must contain at least: the name of the association of apartment owners, the date of the meeting of the association of apartment owners, the printed name and signature of the person or persons giving the proxy, the apartment or apartments for which the proxy is given, the printed name of the person or entity to whom the proxy is given, and the date that the proxy is given.

(b) A proxy shall only be valid for the meeting to which the proxy pertains and its adjournments, may designate any person as proxy, and may be limited as the apartment owner desires and indicates.

(c) Proxies may be given to the board of directors as an entity.

(d) No officer of a board of directors shall use association funds to solicit proxies; provided that this shall not prevent an officer from exercising his right as an apartment owner under Section 514-82 (b)(4).

[(d)] (e) Nothing in this section shall affect the holder of any proxy under a first mortgage of record encumbering an apartment or under an agreement of sale affecting an apartment."

SECTION 5. Section 514A-83.4, Hawaii Revised Statutes, is amended to read as follows:

"**§514A-83.4 Meeting minutes.** Minutes of meetings of the board of directors and association of apartment owners and the association's financial state-

ACT 341

ments shall be available for examination by apartment owners at convenient hours at a place designated by the board, shall be mailed to any owner upon the owner's request at the owner's cost and shall include the recorded vote of each board member on all motions except motions voted on in executive session."

SECTION 6. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 8. This Act shall take effect upon its approval.

*(Approved June 13, 1988.)

Note

1. So in original.