

ACT 155

H.B. NO. 826

A Bill for an Act Relating to Real Estate Professionals.

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 the person has demonstrated by passing with a grade satisfactory to the real estate commission a written examination appropriate to the license sought that the person 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 salespersons, 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 reputation for honesty, truthfulness, financial integrity, 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; or
- (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 467-11, Hawaii Revised Statutes, is amended to read as follows:

“**§467-11 Fees; original license and biennial renewals.** (a) All fees for applications, registrations, certificates, and any license prescribed by this chapter shall be deposited to the credit of the general fund, and all fees allocated to the

real estate education fund shall be as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91.

(b) The biennial renewal fee shall be paid to the department of commerce and consumer affairs on or before December 31 of each even-numbered year. Failure, neglect, or refusal of any duly licensed real estate broker or real estate salesperson to pay the biennial renewal fee shall constitute a forfeiture of the license of the broker or salesperson. The license of the broker or salesperson may be restored upon written application therefor, payment of the delinquent fees and the penalty fees as provided in the rules adopted by the director of commerce and consumer affairs pursuant to chapter 91, and satisfaction of such other requirements as the commission may impose as a condition to restoration.

(c) A broker or salesperson may place [the] that broker's or salesperson's license on an inactive status [upon payment of the proper fee] by filing an application and setting forth such information as may be prescribed or required by the commission, and such-license may be renewed biennially on or before December 31 of each even-numbered year[.] by payment of the proper fee. A broker or salesperson may reactivate that person's inactive license by filing an application and setting forth such information as may be prescribed or required by the commission and payment of the proper fee.

[(d) 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.]

[(e) (d) The commission may refund any fee erroneously paid to it under this section when the commission deems it just and equitable.

[(f) (e) If beginning on July 1, 1987, the education fund balance at the end of any fiscal biennium exceeds \$1,200,000, there shall be a moratorium on such renewal contributions and the commission shall review and consider a reduction in the same amount in license fees.”

SECTION 3. Section 467-12, Hawaii Revised Statutes, is amended to read as follows:

“§467-12 Place of business and posting of license. (a) A licensed real estate broker shall have and maintain a definite place of business in the State, in compliance with this chapter and the rules of the commission, and shall display therein [his] the real estate broker's license[.] and any associating real estate salesperson's license.

(b) No real estate broker's branch office shall operate without a license previously obtained under and in compliance with this chapter and the rules of the commission.

(c) A real estate broker's site office shall be registered with the commission and in compliance with this chapter and the rules of the commission.”

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 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 to do so 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 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, 515; section 516-71 or 516D-11; 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 or AIDS Related Complex (ARC) or has been tested for HIV (human immunodeficiency virus) infection shall not be considered a material fact; [and]
- (19) When the licensee obtains or causes to be obtained, directly or indirectly, any licensing examination or licensing examination question for the purpose of disseminating the information to future takers of the examination for the benefit or gain of the licensee[.]; or
- (20) Failure to maintain a reputation for honesty, truthfulness, financial integrity, and fair dealing.

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 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. Section 467-30, Hawaii Revised Statutes, is amended to read as follows:

"§467-30 Registration, 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, which are used to provide transient lodging for periods of less than thirty days.

(b) Any sole proprietor, partnership, or corporation[, or other business entity] operating a [a] condominium hotel who is not a custodian or caretaker as defined in section 467-1 shall:

- (1) Obtain a license as a real estate broker in compliance with this chapter and the rules of the commission;
- (2) Register on an annual basis as a condominium hotel operator. Registration information shall include but not be limited to the number of apartment units managed for others as well as the number of apartment units owned by the condominium hotel operator. Any operator failing to register with the commission shall be subject to a fine not

exceeding an amount equal to \$25 multiplied by the aggregate number of units being utilized as a condominium hotel. Each month or fraction of a month of noncompliance shall be deemed a new and separate violation;

- (3) Provide evidence of fidelity bonding to the commission in an amount equal to \$500 multiplied by the aggregate number of apartment units in the condominium hotel operation; provided that the minimum of the bond required by this paragraph shall not be less than \$20,000 nor greater than \$100,000. The aggregate number of units excludes the number of units owned by the condominium hotel operator either as a sole proprietor, partnership, or corporation or those units included in a registered time share plan managed by a registered time share plan manager. The bond shall cover all of the condominium hotel operator's employees handling or having custody and control of either the condominium hotel operator's or the apartment owner's funds, or both; and
- (4) Pay an application fee and upon approval an initial and an annual registration fee as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91, which fees shall be deposited with the director of finance to the credit of the general fund.

(c) In the course of operating a condominium hotel, neither a real estate broker license nor a salesperson license shall be required of those employees of any sole proprietor, partnership, or corporation[, or other business entity] performing or facilitating the delivery of customary hotel services.

(d) All employees handling or having custody or control of the funds received by the condominium hotel operator shall be covered by a fidelity bond. The fidelity bond shall protect the condominium hotel operator against fraudulent or dishonest acts by the employees of the condominium hotel operator.

(e) As used in this section "operating a condominium hotel" includes the management of the apartment units in a condominium project for purposes of providing transient lodging, and includes the renting or leasing of condominium apartment units directly or indirectly from the apartment owners for purposes of providing transient lodging.

(f) Condominium hotel operators operating exclusively in condominium projects specifically authorized as hotels by county zoning and regulations and specifically permitted by the condominium project's declaration and bylaws shall be exempt from subsection (b)(1); provided that they shall apply to the commission for the exemption or exclusion on a form provided by the commission.

(g) Any condominium hotel operator aggrieved by the fraudulent or dishonest acts of an employee shall act promptly and diligently to recover from the fidelity bond required by this section. The condominium hotel operator shall apply all proceeds received from the fidelity bond against all losses incurred by apartment owners due to fraudulent or dishonest acts by employees. If more than one apartment owner suffers a loss, the condominium hotel operator shall divide the proceeds among the apartment owners in proportion to each apartment owner's loss.

(h) All persons handling or having custody and control of either the condominium hotel operator's or the apartment owner's funds shall be either employees of the condominium hotel operator or principals of the condominium hotel operator."

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SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval.

(Approved May 23, 1991.)