

ACT 241

S.B. NO. 1367

A Bill for an Act Real Estate Sales.

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

SECTION 1. Section 467-1, Hawaii Revised Statutes, is amended by amending the definitions of “real estate broker” and “real estate salesperson” to read as follows:

““Real estate broker” means any person 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, or manages or offers to manage, 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 the person of the option and for the purpose or as a means of evading the licensing requirement of this chapter.

“Real estate salesperson” means any individual 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, or manages or offers to manage, 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 the individual of the option and for the purpose or as a means of evading the licensing requirements of this chapter. Every real estate salesperson shall be under the direction of a real estate broker for all real estate transactions.”

SECTION 2. Section 467-4, Hawaii Revised Statutes, is amended to read as follows:

“§467-4 Powers and duties of commission. In addition to any other powers and duties authorized by law, the real estate commission shall:

- (1) Grant licenses, registrations, and certificates pursuant to this chapter;
- (2) Adopt, amend, or repeal rules as it may deem proper to effectuate this chapter and carry out its purpose, which is the protection of the general public in its real estate transactions. All rules shall be approved by the

governor and the director of commerce and consumer affairs, and when adopted pursuant to chapter 91 shall have the force and effect of law. The rules may forbid acts or practices deemed by the commission to be detrimental to the accomplishment of the purpose of this chapter, and the rules may require real estate brokers and salespersons to complete educational courses or to make reports to the commission containing items of information as will better enable the commission to enforce this chapter and the rules, or as will better enable the commission from time to time to amend the rules to more fully effect the purpose of this chapter, and, further, the rules may require real estate brokers and salespersons to furnish reports to their clients containing matters of information as the commission deems necessary to promote the purpose of this chapter. This enumeration of specific matters that may properly be made the subject of rules shall not be construed to limit the commission's broad general power to make all rules necessary to fully effectuate the purpose of this chapter;

- (3) Enforce this chapter and rules adopted pursuant thereto;
- (4) Suspend, fine, terminate, or revoke any license, registration, or certificate for any cause prescribed by this chapter, or for any violation of the rules, and may also require additional education or re-examination, and refuse to grant any license, registration, or certificate for any cause that would be a ground for suspension, fine, termination, or revocation of a license, registration, or certificate;
- (5) Report to the governor and the legislature relevant information that shall include but not be limited to a summary of the programs and financial information about the trust funds, including balances and budgets, through the director of commerce and consumer affairs annually, before the convening of each regular session, and at other times and in other manners as the governor or the legislature may require concerning its activities;
- (6) Publish and distribute pamphlets and circulars, produce seminars and workshops, hold meetings in all counties, and require other education [containing] regarding any information as is proper to further the accomplishment of the purpose of this chapter; [and]
- (7) Enter into contract or contracts with qualified persons to assist the commission in effectuating the purpose of this chapter[.]; and
- (8) Establish standing committees to assist in effectuating this chapter and carry out its purpose, which shall meet not less often than ten times annually, and shall from time to time meet in each of the counties."

SECTION 3. Section 467-8, Hawaii Revised Statutes, is amended to read as follows:

“§467-8 Prerequisites for¹ license, registration, or certificate. No license, registration, or certificate under this chapter shall be issued to:

- (1) Any individual applying for a real estate broker or salesperson license who does not satisfy the requirements set forth in section 467-9.5;
- (2) Any individual applying for a real estate broker or salesperson license unless the individual has demonstrated by passing with a grade satisfactory to the commission an examination appropriate to the license sought that the individual has a reasonable knowledge of:
 - (A) Estates, interests, and rights in real property;
 - (B) The documents or acts or occurrences by which 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) Other subjects that 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 or record of competency, honesty, truthfulness, financial integrity, and fair dealing;
 - (4) Any partnership unless the real estate brokerage business thereof is under the direct management of a principal broker who is a general partner or employee thereof and [unless the general partner or employee] holds a real estate broker's license; [or]
 - (5) Any corporation unless the real estate brokerage business thereof is under the direct management of a principal broker who is an officer or employee thereof and [unless the officer or employee] holds a real estate broker's license[.];
 - (6) Any individual applying for a real estate broker's license who does not have a current active or inactive Hawaii real estate salesperson's license; or
 - (7) Any person with a trade name, partnership, or corporation that is not currently registered with the department of commerce and consumer affairs; provided that no real estate salesperson's license shall be approved or issued with a trade name."

SECTION 4. Section 467-9.5, Hawaii Revised Statutes, is amended to read as follows:

“§467-9.5 Prerequisites for examination. No individual shall be eligible for the licensing examination unless:

- (1) The individual is a citizen of the United States, or an alien who is authorized to work in the United States, and of the age of majority;
- (2) The individual applying for the real estate salesperson examination has satisfactorily completed a prelicensing course for real estate salesperson candidates which includes real estate principles, or its equivalent, approved or accredited by the commission;
- (3) The individual applying for the real estate broker examination has satisfactorily completed a prelicensing course for real estate broker candidates, or its equivalent, approved or accredited by the commission; [and]
- (4) The individual applying for the real estate broker examination:
 - (A) Is licensed as an active or inactive Hawaii real estate salesperson; and
 - (B) Has been engaged in the real estate business as a licensed Hawaii real estate salesperson as determined by the commission for not less than a [for a minimum] period of two years on a full-time basis and has practical experience in the real estate field as determined by the commission.

The commission may waive a portion of the [two years'] required experience, if the individual has had other experience or education in real estate, which, in the opinion of the commission, is equivalent to the required experience, to be established by detailed explanatory affidavit or in any other manner as may be determined by the commission[.]; or

- (5) Unless specifically authorized by the commission,

Each individual shall certify on the application for examination that the prerequisites set forth [above] in this section have been or will be satisfied prior to the date of

examination. The examination score of any individual who has taken the examination without having satisfied the prerequisites set forth [above] in this section prior to the date of examination shall be voided.”

SECTION 5. Section 467-11.5, Hawaii Revised Statutes, is amended to read as follows:

“§467-11.5 Prerequisites for license renewal. (a) Prior to the license renewal of a real estate broker or real estate salesperson, the licensee shall provide the commission with proof of having attended ten hours of continuing education or its equivalent as determined by the commission during the two year period preceding the application for renewal. Upon individual application and payment of the proper fee, the commission shall waive this requirement for the following reasons:

- (1) The licensee has been licensed in Hawaii on an active status for twenty or more years;
- (2) The licensee, as a trustee of a Hawaii private or charitable trust, is involved in real estate;
- (3) The licensee, as an active Hawaii licensed attorney or an active Hawaii licensed accountant, is involved in real estate; and
- (4) The licensee, as a participant in Hawaii public or community service at any time during the renewal period to which the waiver applies or eight years of such service, is involved in real estate or real estate laws.

Failure to satisfy the continuing education requirement by the license expiration date shall result in the license being automatically placed on an “inactive” status.

(b) To reactivate a license which has been placed on an “inactive” status the licensee shall submit to the commission proof of having satisfied the continuing education requirement of this section[.], a complete application setting forth such information as may be prescribed or required by the commission, and payment of the proper fee. Continuing education courses, as approved by the commission, may include but are not limited to:

- (1) Protection of the general public in its real estate transactions;
- (2) Consumer protection;
- (3) Improvement of the licensee’s competency and professional standards and practice; and
- (4) A curriculum level above the current minimal competency entry level.

(c) Courses offered by alternative delivery methods with interactive instructional techniques may be approved by the commission. Interactive instructional techniques may include but are not limited to:

- (1) The opportunity for immediate exchange with an instructor; and
- (2) Assessment and remediation through the assistance of computer, electronic, audio, or audiovisual interactive instruction designed to internally measure and evaluate whether students have mastered stated learning objectives.

(d) No license shall be renewed if the license trade name, partnership or corporation is not currently registered with the department of commerce and consumer affairs.”

SECTION 6. Section 467-14, Hawaii Revised Statutes, is amended to read as follows:

“§467-14 Revocation, [and] suspension [of licenses.], and fine. In addition to any other actions authorized by law, the [real estate] commission may revoke any license issued under this chapter, [or] suspend the right of the licensee to use the license, fine any person holding a license, registration, or certificate issued under this

chapter, or terminate any registration or certificate issued under this chapter, for any cause authorized by law, including but not limited to the following:

- (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 the 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 real estate salesperson's employer or the real estate broker with whom the real estate 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 real estate salesperson's employer or the real estate broker with whom the real estate 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,] partnership, permits any member of the [copartnership] partnership 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 real estate broker represents;
- (13) Violating this chapter; [chapters] chapter 484, 514A, 514E, or 515; section 516-71; 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] real estate broker may pay a commission to:

- (A) A licensed real estate broker of another state, territory, or possession of the United States if that real estate broker does not conduct in this State any of the negotiations for which a commission is paid;
 - (B) A real estate broker lawfully engaged in real estate brokerage activity under the laws of a foreign country if that real estate 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,] person, 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;
 - (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;
 - (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 or record of competency, 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 real estate salesperson, or on the licensee’s own behalf.”

SECTION 7. Section 467-15, Hawaii Revised Statutes, is amended to read as follows:

“**§467-15 Hearings.** In every case where it is proposed to revoke or suspend the exercise of any license, fine any person holding a license, registration, or certificate, terminate any registration or certificate, or take any other action authorized by law, for any of the causes enumerated in section 467-14, the person concerned shall be given notice and hearing in conformity with chapter 91.

In all proceedings before it, the commission and each member thereof shall have the same powers respecting administering oaths, compelling the attendance of witnesses and the production of documentary evidence, and examining witnesses, as are possessed by circuit courts. In cases of disobedience by any person of any order of the commission, or any member thereof, or of any subpoena issued by it, or the member, or the refusal of any witness to testify to any matter to which the witness may be questioned lawfully, any circuit judge, on application by the commission, or a member thereof, shall compel obedience as in the case of disobedience of the requirements of a subpoena issued by a circuit court, or a refusal to testify therein.”

SECTION 8. Section 467-16, Hawaii Revised Statutes, is amended to read as follows:

“**§467-16 Real estate recovery fund; use of fund; fees.** (a) The [real estate] commission shall establish and maintain a trust fund which shall be known as the 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 salesperson, upon the grounds of fraud, misrepresentation, or deceit, may recover upon the commission’s settlement of a claim or by order of the circuit court or district court of the county where the violation occurred, an amount of not more than \$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.

(b) When any person makes application for an original license to practice as a real estate broker or salesperson the person shall pay, in addition to the person’s original license fee, a real estate recovery fund fee as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91 for deposit in the real estate recovery fund. If the commission does not issue the license, this fee shall be returned to the applicant.

(c) The commission, as the trustee of the real estate recovery fund, shall be authorized to expend the funds to:

- (1) Retain private legal counsel to represent the commission in any action involving or which may result in payment from the real estate recovery fund;
- (2) Retain a certified public accountant for accounting and auditing of the real estate recovery fund;
- (3) Employ necessary personnel, not subject to chapters 76 and 77, to assist the commission in exercising its powers and duties with respect to the real estate recovery fund; and
- (4) Retain a consultant to recover and collect any payments from the real estate recovery fund plus interest from the judgement debtor.”

SECTION 9. Section 467-26, Hawaii Revised Statutes, is amended to read as follows:

“**§467-26 Penalty.** Any person violating this chapter shall be fined not more than [\$1,000] \$5,000 for each violation.”

SECTION 10. Section 467-30, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) All condominium hotel operators shall register with the commission as a sole proprietor, partnership, or corporation and 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 on or before December 31 of each year as a condominium hotel operator with the commission[.]; provided that after December 31, 1996, registration shall be on a biennial basis on or before December 31 of each even-numbered year. Registration information shall include but not be limited to the number of apartments managed for others as well as the number of apartments 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 apartments being utilized as

a condominium hotel. Each month or fraction of a month of non-compliance 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 apartments 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 apartments excludes the number of apartments owned by the condominium hotel operator either as a sole proprietor, partnership, or corporation or those apartments 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]. The commission may adopt rules establishing conditions and terms by which it may grant an exemption or bond alternative, or permit deductibles. No fidelity bond exemption shall be granted to a condominium hotel operator who is exempt from paragraph (1); 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;

provided that this subsection shall not apply to persons who are subject to section 467-2."

SECTION 11. Act 95, Session Laws of Hawaii 1987, is reenacted as of July 1, 1995; provided that Act 95, Session Laws of Hawaii 1987, as amended by Act 68, Session Laws of Hawaii 1994, is amended by amending section 3 to read as follows:²

"SECTION 3. This Act shall take effect upon its approval and shall apply to license renewals for the biennium beginning January 1, 1991[; provided that this Act shall be repealed as of July 1, 1995]."

SECTION 12. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 13. This Act shall take effect upon its approval.

(Approved June 29, 1995.)

Notes

1. Prior to amendment "a" appeared here.
2. So in original.