

ACT 240

S.B. NO. 238

A Bill for an Act Relating to Real Estate Brokers and Salespersons.

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

SECTION 1. The purpose of this Act is to:

- (1) Facilitate review and understanding of the laws relating to the continuing education requirements for real estate license renewal;
- (2) Provide an option to expending time and funds for prelicensing education and examination requirements for a candidate who may have a questionable background experience that may cause a denial of licensure;
- (3) Simplify and clarify prelicensing broker requirements including updating to present standards among the other states and providing more fairness to specialty areas;
- (4) Provide candidates and licensees with additional real estate prelicensing examination options that include the auditor-recommended option of providing equivalency to out-of-state licensees for passage of the other state's uniform section of the examination;
- (5) Ensure that real estate licensees, who renew licenses on time, will receive notice of relicensure and their new license by the start of the new licensing period;
- (6) Simplify, decrease, and clarify the procedures for restoration of forfeited licenses including adding options and expanding the restoration periods;
- (7) Deregulate the displaying of the licenses of associated real estate salespersons;
- (8) Require the registration, rather than the licensure, of real estate brokers' branch offices;
- (9) Repeal the requirement that real estate site offices be registered;
- (10) Ensure that real estate recovery fund requirements do not conflict with bankruptcy laws; and

- (11) Simplify and clarify registration requirements applicable to condominium hotel operators.

SECTION 2. Chapter 467, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

- “§467- Continuing education.** (a) The commission shall have the authority to:
- (1) Set content and other requirements for continuing education courses, providers, and instructors;
 - (2) Determine whether requirements have been met;
 - (3) Specify a mandatory core course, courses, or equivalencies for a licensing biennium;
 - (4) Determine how many hours of a continuing education course will be credited toward continuing education requirements for real estate licensees;
 - (5) Develop its own continuing education courses or approve courses developed by others; and
 - (6) Authorize the provision of courses taught by alternative delivery methods with interactive instructional techniques. Interactive instructional techniques may include but are not limited to:
 - (A) The opportunity for immediate exchange with an instructor; and
 - (B) 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.
- (b) Continuing education providers shall:
- (1) Certify that instructors have met the commission requirements;
 - (2) Ensure that instructors are competent in the subject matter of the course and are current in their knowledge of the subject matter; and
 - (3) Ensure that the course is based on current information, laws, and rules.
- (c) Continuing education instructors shall ensure that their courses are based on current information, laws, and rules.
- (d) Continuing education courses shall be designed to improve a licensee's competency, or professional standards and practice and shall:
- (1) Be offered by a provider approved by the commission and either be:
 - (A) Approved by the commission and delivered by an instructor certified by a commission-approved continuing education provider;
 - (B) A national course delivered by an instructor certified by the National Association of Realtors or its affiliates;
 - (C) A national course delivered by an instructor certified by the Building Owners and Managers Association, the Community Associations Institute, or any other national organization approved by the commission; or
 - (D) Certified by the Association of Real Estate License Law Officials;
 - (2) Be designed to allow students to exceed minimal entry level competency in the subject matter of the course including consumer protection in real estate transactions; and
 - (3) Not require an examination.”

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

“§467-8 Prerequisites for license, registration, or certificate. (a) 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 holds a current active real estate broker's license;
- (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 holds a current active 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, limited liability company, or corporation that is not currently registered with the business registration division of the department of commerce and consumer affairs; provided that no real estate salesperson's license shall be approved or issued with a trade name[.]; or
- (8) Any limited liability company unless the real estate brokerage business is under the direct management of a principal broker who is a member of a member-managed limited liability company or a manager of a manager-managed limited liability company or employee and holds a current active real estate broker's license.

(b) Prior to submitting to preclicensing education or examination requirements, an individual candidate may request that the commission consider a preliminary decision as to whether the individual candidate for a real estate license will be denied a real estate license pursuant to section 467-8(a)(3). The individual candidate shall submit a completed application, all information requested by the commission, and the nonrefundable application fee as provided in rules adopted by the director pursuant to chapter 91. The preliminary decision shall provide advisory guidance, shall not be construed as binding, and shall not be subject to appeal. The individual candidate seeking a preliminary decision shall not be considered an applicant for licensure. A preliminary decision that is unfavorable to the individual shall not prevent the individual from submitting a complete license application and fees after successful completion of the preclicensing requirements.”

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

“§467-9.5 Prerequisites for examination. (a) No individual shall be eligible for the licensing examination unless[:] the individual is:

- (1) [The individual is a] 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] Applying for the real estate salesperson examination and has satisfactorily completed a commission-approved preclicensing course for real estate salesperson candidates, which includes real estate principles[,] or [its] their equivalent[, approved or accredited] as determined by the commission;
- (3) [The individual applying] Applying for the real estate broker examination [has satisfactorily completed a preclicensing course for real estate broker candidates, or its equivalent, approved or accredited by the commission;
- (4) The individual applying for the real estate broker examination] and:
 - (A) Is currently licensed as [an active or inactive] a 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 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 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)] (B) Has satisfactorily completed a commission-approved preclicensing course for real estate broker candidates, or its equivalent as determined by the commission; and
- (C) Has experience as a full-time state-licensed real estate salesperson associated with a Hawaii-licensed real estate broker for the three-year period immediately prior to the licensing examination and has practical real estate salesperson experience, as certified by the principal broker or principal brokers during the subject period. The candidate shall secure commission approval of the candidate's experience certification application prior to the date of the examination. Subject to commission approval, a candidate may request equivalency for a portion of the experience requirement based on real estate license experience in another state, as determined by the commission; or

- (4) [Unless specifically] Specifically authorized by the commission.

(b) Each individual shall certify on the application for examination that the prerequisites set forth 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 in this section prior to the date of examination shall be voided.”

SECTION 5. Section 467-9.6, Hawaii Revised Statutes, is amended to read as follows:

“§467-9.6 Examination. (a) Every applicant for a real estate examination shall file an application with either the commission or the testing service agency designated by the commission pursuant to rules of the commission to provide the testing service. The application shall be in a form prescribed by the commission and

shall include a certification statement that the applicant has fulfilled or will fulfill by the date of the examination, the prerequisites for examination. Every application shall be accompanied by an examination fee as determined by the commission by rules adopted pursuant to chapters 26 and 91. Applicants shall apply for real estate licenses in the manner prescribed by the commission.

(b) The commission may prescribe the passage of a specific section or sections of the examination for different purposes, including the following:

- (1) A current out-of-state licensee requesting an equivalency to the uniform part of the state precicensing examination based on previously passing the uniform portion of another state's licensing examination or equivalent as determined by the commission. The approved equivalency will be for the respective examination passed in the other state;
- (2) Equivalency to continuing education requirements as determined by the commission;
- (3) Restoration of forfeited license; and
- (4) Reinstatement of license due to disciplinary action, as determined by the commission;

subject to the contract with the testing service and submission of application and approval prior to application for the examination."

SECTION 6. Section 467-11, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

"(b) The biennial renewal fee [shall be paid to] and completed renewal application shall be submitted to the department of commerce and consumer affairs on or before [December 31 of each even-numbered year.] the commission prescribed deadline prior to the expiration date of the license. All real estate licenses expire on December 31 of an even-numbered year. Failure, neglect, or refusal of any duly licensed real estate broker or real estate salesperson to pay the biennial renewal fee and to submit a completed renewal application shall constitute a forfeiture of the license [of the broker or salesperson.] as of January 1 of the subsequent odd-numbered year. The forfeited license [of the broker or salesperson] may be restored upon [written] approval of a completed 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 the applicable requirements in sections 467-8, 467-9, 467-9.5, and 467-11.5; and prior to submission of the completed application; and satisfaction of [such other requirements as the commission may impose as a condition to restoration.] the following as applicable:

- (1) For a license forfeited for more than one year but less than four years, the successful completion of the commission-approved course or courses or passage of the commission-approved examination; or
- (2) For a license forfeited for more than four years, the successful passage of the commission-approved examination.

(c) A real estate broker or real estate salesperson may place [that broker's or salesperson's] that person's license on an inactive status by filing an application and setting forth such information as may be prescribed or required by the commission, and such license [may] shall be renewed [biennially] on or before [December 31 of each even-numbered year] the commission prescribed deadline prior to the expiration date of the license by payment of the [proper] biennial renewal fee[.] and submission of a completed renewal application. A real estate broker or real estate salesperson may reactivate that person's inactive license by satisfying section 467-11.5, filing an application, and setting forth such information as may be prescribed or required by the commission, and [payment of] paying the proper fee."

SECTION 7. 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 the real estate broker’s license and upon request make available any associating real estate salesperson’s license.

(b) No real estate broker’s branch office shall operate without a [license] registration 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 8. Section 467-18, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (c) to read:

“(c) The court shall proceed upon the application in a summary manner[,] and, upon the hearing thereof, the aggrieved person shall be required to show:

- (1) The person is not a spouse of debtor, or the personal representative of such spouse[.];
- (2) The person has complied with all the requirements of this section[.];
- (3) The person has obtained a judgment as set out in subsection (b) of this section, stating the amount thereof and the amount owing thereon at the date of the application[.];
- (4) The person has made all reasonable searches and inquiries to ascertain whether the judgment debtor is possessed of real or personal property or other assets, liable to be sold or applied in satisfaction of the judgment[.];
- (5) That by such search the person has discovered no personal or real property or other assets liable to be sold or applied, or that the person has discovered certain of them, describing them, owned by the judgment debtor and liable to be so applied, and that the person has taken all necessary action and proceedings for the realization thereof, and that the amount thereby realized was insufficient to satisfy the judgment, stating the amount so realized and the balance remaining due on the judgment after application of the amount realized[.]; and
- (6) That where the real estate broker or real estate salesperson is a debtor in a bankruptcy proceeding, the aggrieved person has obtained an order from the bankruptcy court declaring the judgment against the real estate broker or real estate salesperson to be non-dischargeable.”

2. By amending subsection (e) to read:

“(e) Should the commission pay from the real estate recovery fund any amount in settlement of a claim or toward satisfaction of a judgment against a licensed real estate broker or real estate salesperson, the license of the real estate broker or real estate salesperson shall be automatically terminated upon the issuance of a court order authorizing payment from the real estate recovery fund. No real estate broker or real estate salesperson shall be eligible to receive a new license until the expiration of at least five years from the effective date of the termination of the license and until the terminated real estate broker or real estate salesperson has repaid in full, plus interest at the rate provided for in section 478-3, the amount paid from the real estate recovery fund on the terminated real estate broker’s or real estate

salesperson's account. [A discharge in bankruptcy shall not relieve a person from the penalties and disabilities provided in this subsection.]”

SECTION 9. 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, limited liability company, 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] by submitting a completed commission application form with the commission requested information prior to conducting condominium hotel activity, and reregister on or before [December 31 of each even-numbered year.] the commission prescribed deadline prior to the registration expiration date. The registration and re-registration shall expire on December 31 of an 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 noncompliance shall be deemed a new and separate violation;
- (3) [Provide evidence of a current] Obtain and keep current a fidelity bond [or a certification statement from an insurance representative of an] from an insurance company registered with the insurance division of the department of commerce and consumer affairs [to the commission certifying that the bond is in effect and meets the requirement of this section and the rules adopted by the commission, and that the]. The fidelity bond [is] shall be in an amount equal to \$500 multiplied by the aggregate number of apartments in the condominium hotel operation; provided that the minimum amount of the fidelity 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, limited liability company, 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. Upon request by the commission, the condominium hotel operator shall provide evidence of a current fidelity bond or a certification statement from an insurance representative of an insurance company registered with the insurance division of the department of commerce and consumer affairs certifying that the fidelity bond is in effect and meets the requirements of this section and the rules adopted by the commission. 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 an initial registration or a re-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 commerce and consumer affairs to the credit of the compliance resolution fund established pursuant to section 26-9(o); provided that this subsection shall not apply to persons who are subject to section 467-2."

SECTION 10. Section 467-1, Hawaii Revised Statutes, is amended by deleting the definition of "continuing education".

[""Continuing education" means a course:

- (1) With a curriculum level above the current minimal competency entry level in any of the following areas:
 - (A) Protection of the general public in its real estate transactions;
 - (B) Consumer protection; or
 - (C) Improvement of the licensee's competency and professional standards and practice; and
- (2) That is:
 - (A) Approved by the commission and delivered by an approved continuing education instructor;
 - (B) A national course taught by a nationally certified instructor certified by the National Association of Realtors or its affiliates; or
 - (C) A national course taught by a nationally certified instructor certified by, including but not limited to, the Building Owners and Managers Association, the Community Associations Institute, or other national organization approved by the commission;

provided that the continuing education course is offered by an approved continuing education provider. Continuing education courses shall not require an examination.""]

SECTION 11. Until such time as new or revised fees are adopted by the director of commerce and consumer affairs pursuant to chapter 91, Hawaii Revised Statutes, the fee assessed for any application:

- (1) Filed after the effective date of this Act, shall be the lowest non-renewable application fee assessed at the time of the effective date of this Act; and
- (2) Existing on the effective date of this Act, shall be assessed fees pursuant to the Hawaii Administrative Rules applicable to that application prior to the effective date of this Act.

SECTION 12. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

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

(Approved July 2, 1999.)

Note

1. Edited pursuant to HRS §23G-16.5.