

A Bill for an Act Relating to Real Estate.

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

SECTION 1. Section 421H-6, Hawaii Revised Statutes, is amended to read as follows:

“§421H-6 Arbitration of disputes. (a) At the request of any party, any dispute concerning or involving one or more stockholders and a limited-equity housing corporation, its board of directors, managing agent, or one or more other stockholders relating to the interpretation, application, or enforcement of this chapter or the corporation’s charter of incorporation, bylaws, or administrative rules adopted in accordance with its bylaws shall be submitted to arbitration. The arbitration shall be conducted, unless otherwise agreed by the parties, in accordance with ~~the rules adopted by the real estate commission and the provisions of~~ chapter ~~[658A; provided that]~~ 658 and the Condominium Property Regime Rules on Arbitration of Disputes of the American Arbitration Association ~~[shall be used until the commission adopts its rules]~~; provided ~~[further]~~ that where any arbitration rule conflicts with chapter ~~[658,]~~ 658A, chapter ~~[658]~~ 658A shall prevail; provided further that notwithstanding any rule to the contrary, the arbitrator shall conduct the proceedings in a manner which affords substantial justice to all parties; provided further that the proceedings shall be concluded ninety days after the commencement of the arbitration unless extended by mutual consent of the parties involved and their counsel. The arbitrator shall be bound by rules of substantive law and shall not be bound by rules of evidence, whether or not set out by statute, except for provisions relating to privileged communications. The arbitrator shall permit discovery as provided for in the Hawaii rules of civil procedure; provided that the arbitrator may restrict the scope of such discovery for good cause to avoid excessive delay and costs to the parties or the arbitrator may refer any matter involving discovery to the circuit court for disposition in accordance with the Hawaii rules of civil procedure then in effect.

(b) Nothing in subsection (a) shall be interpreted to mandate the arbitration of any dispute involving:

- ~~[(1)]~~ ~~The real estate commission;~~
- ~~[(2)]~~ (1) The mortgagee of a mortgage of record;
- ~~[(3)]~~ (2) The developer, general contractor, subcontractors, or design professionals for the project; provided that when any person exempted by this paragraph is also a stockholder, a director, or managing agent, such person ~~[shall]~~, in those capacities, shall be subject to ~~[the provisions of]~~ subsection (a);
- ~~[(4)]~~ (3) Actions seeking equitable relief involving threatened property damage or the health or safety of stockholders or any other person;
- ~~[(5)]~~ (4) Actions to collect assessments which are liens or subject to foreclosure;
- ~~[(6)]~~ (5) Personal injury claims; or

- [(7)] (6) Actions for amounts in excess of \$2,500 against a limited-equity housing corporation, a board of directors, or one or more directors, officers, agents, employees, or other persons, if insurance coverage under a policy or policies procured by the limited-equity housing corporation or its board of directors would be unavailable because action by arbitration was pursued.”

SECTION 2. Section 467-1.6, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§467-1.6]]~~ **Principal brokers.** (a) The principal broker shall have direct management and supervision of the brokerage firm and its real estate licensees.

(b) The principal broker shall be responsible for:

- (1) The client trust accounts, disbursements from those accounts, and the brokerage firm’s accounting practices;
- (2) The brokerage firm’s records, contracts, and documents;
- (3) All real estate contracts of the brokerage firm and its handling by the associated real estate salesperson;
- (4) The proper handling of any commission application, real estate license application, or renewal application that the principal broker or the brokerage firm expressly agrees to handle on behalf of the applicant, including without limitation, verifying for completeness and appropriate fees, and mailing or delivering the appropriate documents to the commission by the required deadline;
- (5) Developing policies and procedures for the brokerage firm concerning the handling of real estate transactions and the conduct of the associated real estate licensees and other staff, including education and enforcement of the policies and procedures;
- (6) Setting a policy on continuing education requirements for all associated real estate licensees in compliance with the statutory requirement;
- (7) Ensuring that the licenses of all associated real estate licensees and the brokerage firm license are current and active;
- (8) Establishing and maintaining a training program for all associated real estate licensees; and
- (9) Ensuring that all associated real estate licensees are provided information and training on the latest amendments to real estate licensing laws and rules as well as other related laws and rules.

(c) The principal broker may delegate management and supervision duties to one or more brokers in charge subject to the principal broker’s written policies and procedures. The principal broker shall be responsible for the education, enforcement, and records required of such policies and procedures.”

SECTION 3. Section 467-9.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) No individual shall be eligible for the licensing examination unless the individual is:

- (1) A United States citizen ~~[of the]~~, a United States~~[;]~~ national, or an alien ~~[who is]~~ authorized to work in the United States, and of the age of majority; and
- (2) Applying for:
 - (A) 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 equivalent as determined by the commission; or

- (B) The real estate broker examination and:
- (i) ~~[Is currently licensed as a]~~ Holds a current, unencumbered Hawaii real estate salesperson[;] license or a current, unencumbered real estate salesperson or broker license in another state or in a jurisdiction recognized by the Association of Real Estate License Law Officials, with an equivalent real estate licensing law as determined by the commission;
 - (ii) Has satisfactorily completed a commission-approved preclicensing course for real estate broker candidates, or its equivalent as determined by the commission; and
 - (iii) Has experience as a full-time ~~[state-licensed]~~ Hawaii-licensed real estate salesperson associated with a Hawaii-licensed real estate broker for at least three years of the five-year period immediately prior to the submission of the experience certification application and has practical real estate salesperson experience, as certified by the principal broker [or], principal brokers, broker in charge, or brokers in charge, as the case may be, 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 a determination of equivalency [for a portion of the experience requirement based on real estate license experience in another state, as determined by the commission.] for the experience requirement based on real estate salesperson license experience or a current, unencumbered real estate broker license in another state, or in a jurisdiction recognized by the Association of Real Estate License Law Officials, with an equivalent real estate licensing law as determined by the commission."

SECTION 4. 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. Failure to satisfy the continuing education requirement by the license expiration date shall result in the renewed 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 the information as may be prescribed or required by the commission, and payment of the proper fee.

(c) 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.

(d) Upon submission of a renewal application, an individual real estate licensee, who holds a current, unencumbered real estate license in another state, or who holds a current, unencumbered real estate license in a jurisdiction recognized by the Association of Real Estate License Law Officials, with an equivalent real estate licensing law as determined by the commission, may request a determination of

equivalency for the elective course hours of the continuing education requirement. The equivalency shall be based on the successful completion of the continuing education requirements in the other state or jurisdiction prior to submission of the renewal application. Approval of the equivalency shall be subject to the real estate licensee completing the commission-designated core course, as determined by the commission.”

SECTION 5. Section 514A-95, Hawaii Revised Statutes, is amended to read as follows:

“**§514A-95 Managing agents.** (a) Every managing agent shall:

- (1) Be licensed as a real estate broker in compliance with chapter 467 and the rules of the commission or be a corporation authorized to do business under article 8 of chapter 412;
- (2) Register with the commission prior to conducting managing agent activity through approval of a completed registration application, payment of fees, and submission of any other additional information set forth by the commission. The registration shall be for a biennial period with termination on December 31 of an even-numbered year. The commission shall prescribe a deadline date prior to the termination date for the submission of a completed reregistration application, payment of fees, and any other additional information set forth by the commission. Any managing agent who has not met the submission requirements by the deadline date shall be considered a new applicant for registration and subject to initial registration requirements. The information required to be submitted with any application shall include the name, business address, phone number, and names of association of apartment owners managed;
- (3) Obtain and keep current a fidelity bond in an amount equal to \$500 multiplied by the aggregate number of apartments of the association of apartment owners managed by the managing agent; provided that the amount of the fidelity bond shall not be less than \$20,000 nor greater than \$100,000. Upon request by the commission, the managing agent shall provide evidence of a current fidelity bond or a certification statement from an insurance company authorized by the insurance division of the department of commerce and consumer affairs certifying that the fidelity bond is in effect and meets the requirement of this section and the rules adopted by the commission. The managing agent shall permit only employees covered by the fidelity bond to handle or have custody or control of any association of apartment owners funds, except any principals of the managing agent that cannot be covered by the fidelity bond. The fidelity bond shall protect the managing agent against the loss of any association of apartment owners' moneys, securities, or other properties caused by the fraudulent or dishonest acts of employees of the managing agent. Failure to obtain or maintain a fidelity bond in compliance with this chapter and the rules adopted pursuant thereto, including failure to provide evidence of the fidelity bond coverage in a timely manner to the commission, shall result in non-registration or the automatic termination of the registration, unless an approved exemption or a bond alternative is presently maintained. A managing agent who is unable to obtain a fidelity bond may seek an exemption from the fidelity bond requirement from the commission. The commission shall adopt rules establishing the condi-

tions and terms by which it may grant an exemption or a bond alternative, or permit deductibles;

- (4) Act promptly and diligently to recover from the fidelity bond, if the fraud or dishonesty of the managing agent's employees causes a loss to an association of apartment owners, and apply the fidelity bond proceeds, if any, to reduce the association of apartment owners' loss. If more than one association of apartment owners suffers a loss, the managing agent shall divide the proceeds among the associations of apartment owners in proportion to each association of apartment owners' loss. An association of apartment owners may request a court order requiring the managing agent to act promptly and diligently to recover from the fidelity bond. If an association of apartment owners cannot recover its loss from the fidelity bond proceeds of the managing agent, the association of apartment owners may recover by court order from the real estate recovery fund established under section 467-16, provided that:
 - (A) The loss is caused by the fraud, misrepresentation, or deceit of the managing agent or its employees;
 - (B) The managing agent is a licensed real estate broker; and
 - (C) The association of apartment owners fulfills the requirements of sections 467-16 and 467-18 and any applicable rules of the commission;
- (5) Pay a nonrefundable application fee and, upon approval, an initial registration fee, and subsequently pay a reregistration fee, as prescribed by rules adopted by the director of commerce and consumer affairs pursuant to chapter 91. A compliance resolution fee shall also be paid pursuant to section 26-9(o) and the rules adopted pursuant thereto; and
- (6) Report immediately in writing to the commission any changes to the information contained on the registration application or any other documents provided for registration. Failure to do so may result in termination of registration and subject the managing agent to initial registration requirements.
 - (b) The commission may deny any registration or reregistration application or terminate a registration without hearing if the fidelity bond and its evidence fail to meet the requirements of this chapter and the rules adopted pursuant thereto.
 - (c) Every managing agent shall be considered a fiduciary with respect to any property managed by that managing agent.
 - (d) The registration and fidelity bond requirements of this section shall not apply to active real estate brokers in compliance with and licensed under chapter 467."

SECTION 6. Section 421H-5, Hawaii Revised Statutes, is repealed.

SECTION 7. Until such time as administrative rules are adopted, the applications for determinations of equivalency to the experience requirement and to the continuing education requirement each shall be assessed a \$25 nonrefundable application fee in addition to any other applicable fees.

SECTION 8. Statutory material to be repealed is bracketed and stricken.¹ New statutory material is underscored.

SECTION 9. This Act shall take effect on July 1, 2002.

(Approved May 31, 2002.)

Note

1. Edited pursuant to HRS §23G-16.5.