

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

“§467-14 Revocation, suspension, and fine. In addition to any other actions authorized by law, the commission may revoke any license issued under this chapter, 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 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 that 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 partnership, permits any member of the 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; chapter 484, 514A, 514B, 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 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 a transient vacation rental, provided that for purposes of this paragraph, "travel agency" means any person that, 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;
 - (20) Failure to maintain a reputation for or record of competency, honesty, truthfulness, financial integrity, and fair dealing; [ø]

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- (21) Acquiring an ownership interest, directly or indirectly, or by means of a subsidiary or affiliate, in any distressed property that is listed with the licensee or within three hundred sixty-five days after the licensee's listing agreement for the distressed property has expired or is terminated[-]; or
- (22) When the licensee, being a real estate broker or a real estate salesperson, acting on behalf of a seller or purchaser of real estate, acts in a manner that prohibits a prospective purchaser or prospective seller of real estate from being able to retain the services of a real estate broker or real estate salesperson.

For the purposes of paragraphs (1) and (18), the real estate commission shall consider whether the licensee relied in good faith on information provided by other persons or third parties.

As used in this section, "distressed property" has the same meaning as set forth in section 480E-2.

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

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on November 2, 2015.
(Approved May 6, 2015.)