

**PRESENTATION OF THE
REAL ESTATE COMMISSION**

TO THE HOUSE COMMITTEE ON
CONSUMER PROTECTION AND COMMERCE

TWENTY-FIFTH LEGISLATURE
Regular Session of 2009

Wednesday, February 4, 2009
2:00 p.m.

WRITTEN TESTIMONY ONLY

**TESTIMONY ON HOUSE BILL NO. 1561 – RELATING TO REAL ESTATE BROKERS
AND SALESPERSONS.**

TO THE HONORABLE ROBERT N. HERKES, CHAIR, AND
MEMBERS OF THE COMMITTEE:

My name is Trudy Nishihara and I am the Chairperson of the Hawaii Real Estate Commission ("Commission"). The Commission appreciates the opportunity to provide testimony on House Bill No. 1561, which proposes to specify that providing services as a real estate broker and salesperson pursuant to being licensed as a real estate broker and salesperson, is not deemed to be engaged in the practice of law. The Commission is in support of this measure in concept.

Thank you for the opportunity to present written testimony.



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February 3, 2009

The Honorable Robert N. Herkes, Chair
House Committee on Consumer Protection and Commerce
State Capitol, Room 325
Honolulu, Hawaii 96813

RE: H.B. 1561 Relating to Real Estate Brokers and Salespersons

HEARING DATE: Wednesday, February 4, 2009 at 2:00 p.m.

Aloha Chair Herkes and Members of the Committee on Consumer Protection and Commerce:

On behalf of our 9,600 members in Hawai'i, the Hawai'i Association of REALTORS® (HAR) **strongly supports** H.B. 1561.

This measure clarifies Hawai'i Revised Statutes § 467-7 relating to real estate brokers and salespersons, to make clear that real estate licensees acting within the scope of their licenses will not be considered to be engaged in the practice of law.

In 2007, a proposed unauthorized practice of law rule was submitted by the Hawaii State Bar Association (HSBA) and circulated for consideration by the Hawai'i Supreme Court. The draft rule put every licensed real estate professional in jeopardy of practicing law without a license, which is a criminal violation. Fortunately, the Hawai'i Supreme Court asked the HSBA to rewrite and resubmit the Rule.

The real estate industry is highly regulated by statutes and administrative rules. The Real Estate Commission oversees the education, licensure and discipline of real estate licensed professionals. Real estate professionals who have fiduciary duties to their clients do not hold themselves out to the public as qualified to give legal advice.

HAR understands that the review and decision processes of the Supreme Court create a level of uncertainty for real estate professionals that only a clean statutory amendment can address. We have also learned that the State Attorney General, Hon. Mark J. Bennett, has written to the Hawai'i Supreme Court in opposition to the new draft Rule largely because of the numerous industry exemptions it affords. Because of the uncertainty that presently exists, HAR believes that H.B. 1561 is the preferred course of action.

For these reasons, HAR urges your support for this bill. The measure would make clear that real estate brokers and salespersons licensed, regulated, and in good standing under HRS § 467 and Hawaii Administrative Rules Chapter 99 would not be deemed to be practicing law without a license.

Mahalo for the opportunity to testify.