
A BILL FOR AN ACT

RELATING TO RENTAL PROPERTY MANAGERS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 521, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§521- Rental property manager. (a) Every rental
5 property manager who manages three or more dwelling units shall:

6 (1) Be a:

7 (A) Licensed real estate broker in compliance with
8 chapter 467 and the rules of the real estate
9 commission. With respect to any requirement for
10 a corporate rental property manager in any
11 condominium declaration or bylaws recorded before
12 July 1, 2006, any rental property manager
13 organized as a limited liability company shall be
14 deemed to be organized as a corporation for the
15 purposes of this paragraph, unless the
16 declaration or bylaws are expressly amended after
17 July 1, 2006 to require that the rental property



1 manager be organized as a corporation and not as
2 a limited liability company; or

3 (B) Corporation authorized to do business under
4 article 8 of chapter 412;

5 (2) Register with the real estate commission prior to
6 conducting rental property manager activity through
7 approval of a completed registration application,
8 payment of fees, and submission of any other
9 additional information set forth by the commission.

10 The registration shall be for a biennial period with
11 termination on December 31 of an even-numbered year.

12 The real estate commission shall prescribe a deadline
13 date prior to the termination date for the submission
14 of a completed reregistration application, payment of
15 fees, and any other additional information set forth
16 by the commission. Any rental property manager
17 subject to this section who has not met the submission
18 requirements by the deadline date shall be considered
19 a new applicant for registration and subject to
20 initial registration requirements. The information
21 required to be submitted with any application shall



1 include the name, business address, phone number, and
2 names of landlords managed;

- 3 (3) Obtain and keep current a fidelity bond in an amount
4 equal to \$500 multiplied by the aggregate number of
5 dwelling units of the landlord managed by the rental
6 property manager; provided that the amount of the
7 fidelity bond shall not be less than \$20,000 nor
8 greater than \$500,000. Upon request by the real
9 estate commission, the rental property manager shall
10 provide evidence of a current fidelity bond or a
11 certification statement from an insurance company
12 authorized by the insurance division of the department
13 of commerce and consumer affairs certifying that the
14 fidelity bond is in effect and meets the requirements
15 of this section and the rules adopted by the
16 commission. The rental property manager shall permit
17 only employees covered by the fidelity bond to handle
18 or have custody or control of any landlord funds,
19 except any principals of the rental property manager
20 that cannot be covered by the fidelity bond. The
21 fidelity bond shall protect the rental property
22 manager against the loss of any landlord's moneys,



1 securities, or other properties caused by the
2 fraudulent or dishonest acts of employees of the
3 rental property manager. Failure to obtain or
4 maintain a fidelity bond in compliance with this
5 chapter and the rules adopted pursuant thereto,
6 including failure to provide evidence of the fidelity
7 bond coverage in a timely manner to the commission,
8 shall result in nonregistration or the automatic
9 termination of the registration, unless an approved
10 exemption or a bond alternative is presently
11 maintained. A rental property manager who is unable
12 to obtain a fidelity bond may seek an exemption from
13 the fidelity bond requirement from the commission;

- 14 (4) Act promptly and diligently to recover from the
15 fidelity bond, if the fraud or dishonesty of the
16 rental property manager's employees causes a loss to a
17 landlord, and apply the fidelity bond proceeds, if
18 any, to reduce the landlord's loss. If more than one
19 landlord suffers a loss, the rental property manager
20 shall divide the proceeds among the landlords in
21 proportion to each landlord's loss. A landlord may
22 request a court order requiring the rental property



1 manager to act promptly and diligently to recover from
2 the fidelity bond. If a landlord cannot recover its
3 loss from the fidelity bond proceeds of the rental
4 property manager, the landlord may recover by court
5 order from the real estate recovery fund established
6 under section 467-16, provided that:

7 (A) The loss is caused by the fraud,
8 misrepresentation, or deceit of the rental
9 property manager or its employees;

10 (B) The rental property manager is a licensed real
11 estate broker; and

12 (C) The landlord fulfills the requirements of
13 sections 467-16 and 467-18 and any applicable
14 rules of the real estate commission;

15 (5) Pay a nonrefundable application fee and, upon
16 approval, an initial registration fee, and
17 subsequently pay a reregistration fee, as prescribed
18 by rules adopted by the director of commerce and
19 consumer affairs pursuant to chapter 91. A compliance
20 resolution fee shall also be paid pursuant to section
21 26-9(o) and the rules adopted pursuant thereto; and



1 (6) Report immediately in writing to the real estate
2 commission any changes to the information contained on
3 the registration application or any other documents
4 provided for registration. Failure to do so may
5 result in termination of registration and subject the
6 rental property manager to initial registration
7 requirements.

8 (b) The real estate commission may deny any registration
9 or reregistration application or terminate a registration
10 without hearing if the fidelity bond and supporting documents
11 fail to meet the requirements of this chapter and the rules
12 adopted pursuant thereto.

13 (c) Every rental property manager shall be considered a
14 fiduciary with respect to any dwelling unit managed by that
15 rental property manager.

16 (d) The registration requirements of this section shall
17 not apply to active real estate brokers in compliance with and
18 licensed under chapter 467.

19 (e) If a rental property manager receives a request from
20 the commission to distribute any commission-generated
21 information, printed material, or documents to the landlord, the
22 rental property manager shall make the distribution at the cost

1 of the landlord within a reasonable period of time after
2 receiving the request. The requirements of this subsection
3 apply to all rental property managers.

4 (f) The real estate commission may adopt rules under
5 chapter 91 to implement this section."

6 SECTION 2. Section 521-8, Hawaii Revised Statutes, is
7 amended by adding a new definition to be appropriately inserted
8 and to read as follows:

9 "Rental property manager" means any person who, for
10 compensation or a valuable consideration, acts as an agent for
11 the management of more than three separate dwelling units owned
12 by another person or entity and who is responsible for the
13 collection of rental payments pursuant to a rental agreement
14 from tenants residing in those dwelling units. The term
15 includes a person who acts as an agent on behalf of a landlord
16 as defined in this section."

17 SECTION 3. Section 467-1, Hawaii Revised Statutes, is
18 amended by amending the definition of "custodian or caretaker"
19 to read as follows:

20 "Custodian or caretaker" means any individual, who for
21 compensation or valuable consideration, is employed as an
22 employee by a single owner and has the responsibility to manage



1 or care for that real property left in the individual's trust;
2 provided that the term "custodian" or "caretaker" shall not
3 include any individual who [~~leases~~]:

4 (1) Leases or offers to lease [~~or rents~~] any real estate;

5 (2) Rents or offers to rent [~~or~~] any real estate [~~for more~~
6 ~~than a single owner; provided further that a single~~
7 ~~owner shall not include an association of owners of a~~
8 ~~condominium, cooperative, or planned unit~~
9 ~~development.~~]; or

10 (3) Manages real property and collects rental payments on
11 behalf of a landlord or owner as a rental property
12 manager as defined in section 521-8 any real estate."

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

15 "**§467-2 Exceptions.** The provisions requiring licensing as
16 a real estate broker or salesperson shall not apply:

17 (1) To any individual who, as owner of any real estate or
18 acting under power of attorney from the owner,
19 performs any of the acts enumerated in the definitions
20 of real estate broker and real estate salesperson with
21 reference to the real estate; provided that the term
22 "owner" as used in this paragraph shall not include



1 any individual engaged in the business of real estate
2 development or brokerage or include an individual who
3 acquires any interest in any real estate for the
4 purpose or as a means of evading the licensing
5 requirements of this chapter; and provided further
6 that the term individual "acting under power of
7 attorney" as used in this paragraph shall not include
8 any individual engaged in the business of real estate
9 development or brokerage or any individual who acts
10 under a power of attorney for the purpose or as a
11 means of evading the licensing requirements of this
12 chapter;

13 (2) To any person acting as a receiver, trustee in
14 bankruptcy, personal representative, or trustee acting
15 under any trust agreement, deed of trust, or will, or
16 otherwise acting under any order of authorization of
17 any court;

18 (3) To [~~any individual who leases, offers to lease, rents,~~
19 ~~or offers to rent, any real estate or the improvements~~
20 ~~thereon of which the individual is the]~~ custodian or
21 caretaker; provided that a custodian or caretaker



1 shall not include a rental property manager as defined
2 in section 521-8;

3 (4) To any person who manages, rents, or operates a hotel;
4 or

5 (5) To any provider agency owning, leasing, operating, or
6 managing a homeless facility or any other program for
7 the homeless authorized under part VII of chapter
8 356D."

9 SECTION 5. Section 467-14, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "**§467-14 Revocation, suspension, and fine.** In addition to
12 any other actions authorized by law, the commission may revoke
13 any license issued under this chapter, suspend the right of the
14 licensee to use the license, fine any person holding a license,
15 registration, or certificate issued under this chapter, or
16 terminate any registration or certificate issued under this
17 chapter, for any cause authorized by law, including but not
18 limited to the following:

19 (1) Making any misrepresentation concerning any real
20 estate transaction;

21 (2) Making any false promises concerning any real estate
22 transaction of a character likely to mislead another;



- 1 (3) Pursuing a continued and flagrant course of
2 misrepresentation, or making of false promises through
3 advertising or otherwise;
- 4 (4) Without first having obtained the written consent to
5 do so of both parties involved in any real estate
6 transaction, acting for both the parties in connection
7 with the transaction, or collecting or attempting to
8 collect commissions or other compensation for the
9 licensee's services from both of the parties;
- 10 (5) When the licensee, being a real estate salesperson,
11 accepts any commission or other compensation for the
12 performance of any of the acts enumerated in the
13 definition set forth in section 467-1 of real estate
14 salesperson from any person other than the real estate
15 salesperson's employer or the real estate broker with
16 whom the real estate salesperson associates or, being
17 a real estate broker or salesperson, compensates one
18 not licensed under this chapter to perform any such
19 act;
- 20 (6) When the licensee, being a real estate salesperson,
21 acts or attempts to act as a real estate broker or
22 represents, or attempts to represent, any real estate



1 broker other than the real estate salesperson's
2 employer or the real estate broker with whom the real
3 estate salesperson is associated;

4 (7) Failing, within a reasonable time, to account for any
5 moneys belonging to others that may be in the
6 possession or under the control of the licensee;

7 (8) Any other conduct constituting fraudulent or dishonest
8 dealings;

9 (9) When the licensee, being a partnership, permits any
10 member of the partnership who does not hold a real
11 estate broker's license to actively participate in the
12 real estate brokerage business thereof or permits any
13 employee thereof who does not hold a real estate
14 salesperson's license to act as a real estate
15 salesperson therefor;

16 (10) When the licensee, being a corporation, permits any
17 officer or employee of the corporation who does not
18 hold a real estate broker's license to have the direct
19 management of the real estate brokerage business
20 thereof or permits any officer or employee thereof who
21 does not hold a real estate salesperson's license to
22 act as a real estate salesperson therefor;



- 1 (11) When the licensee, being a real estate salesperson,
2 fails to file with the commission a written statement
3 setting forth the name of the real estate broker by
4 whom the licensee is employed or with whom the
5 licensee is associated;
- 6 (12) When the licensee fails to obtain on the contract
7 between the parties to the real estate transaction
8 confirmation of who the real estate broker represents;
- 9 (13) Violating this chapter; chapter 484, 514A, 514B, 514E,
10 or 515; chapter 521 when acting as a rental property
11 manager on behalf of a landlord; section 516-71; or
12 the rules adopted pursuant thereto;
- 13 (14) Splitting fees with or otherwise compensating others
14 not licensed hereunder for referring business;
15 provided that notwithstanding paragraph (5), a real
16 estate broker may pay a commission to:
- 17 (A) A licensed real estate broker of another state,
18 territory, or possession of the United States if
19 that real estate broker does not conduct in this
20 State any of the negotiations for which a
21 commission is paid;



1 (B) A real estate broker lawfully engaged in real
2 estate brokerage activity under the laws of a
3 foreign country if that real estate broker does
4 not conduct in this State any of the negotiations
5 for which a commission is paid; or

6 (C) A travel agency that in the course of business as
7 a travel agency or sales representative, arranges
8 for compensation the rental of a transient
9 vacation rental; provided that for purposes of
10 this paragraph "travel agency" means any person
11 that, for compensation or other consideration,
12 acts or attempts to act as an intermediary
13 between a person seeking to purchase travel
14 services and any person seeking to sell travel
15 services, including an air or ocean carrier;

16 (15) Commingling the money or other property of the
17 licensee's principal with the licensee's own;

18 (16) Converting other people's moneys to the licensee's own
19 use;

20 (17) The licensee is adjudicated insane or incompetent;

21 (18) Failing to ascertain and disclose all material facts
22 concerning every property for which the licensee



1 accepts the agency, so that the licensee may fulfill
2 the licensee's obligation to avoid error,
3 misrepresentation, or concealment of material facts;
4 provided that for the purposes of this paragraph, the
5 fact that an occupant has AIDS or AIDS Related Complex
6 (ARC) or has been tested for HIV (human
7 immunodeficiency virus) infection shall not be
8 considered a material fact;

9 (19) When the licensee obtains or causes to be obtained,
10 directly or indirectly, any licensing examination or
11 licensing examination question for the purpose of
12 disseminating the information to future takers of the
13 examination for the benefit or gain of the licensee;

14 (20) Failure to maintain a reputation for or record of
15 competency, honesty, truthfulness, financial
16 integrity, and fair dealing; or

17 (21) Acquiring an ownership interest, directly or
18 indirectly, or by means of a subsidiary or affiliate,
19 in any distressed property that is listed with the
20 licensee or within three hundred sixty-five days after
21 the licensee's listing agreement for the distressed
22 property has expired or is terminated.



Report Title:

Rental Property; Rental Property Manager; Licensing

Description:

Defines the term "rental property manager" and requires rental property managers who manage more than 3 dwelling units to register with the real estate commission.

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