

JAN 20 2010

A BILL FOR AN ACT

RELATING TO REAL ESTATE BROKERS AND SALESPERSONS.

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

1 SECTION 1. Chapter 456, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§456- Prohibited action; real estate transactions.

5 (a) It shall be unlawful for any notary public to notarize a
6 document relating to a real estate transaction in which the
7 person is involved as a real estate broker or real estate
8 salesperson licensed under chapter 467.

9 (b) Any person who violates this section:

10 (1) Shall be guilty of a petty misdemeanor; and

11 (2) Shall have the person's commission suspended for a
12 period of years."

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

15 "§467-14 Revocation, suspension, and fine. In addition to
16 any other actions authorized by law, the commission may revoke
17 any license issued under this chapter, suspend the right of the



1 licensee to use the license, fine any person holding a license,
2 registration, or certificate issued under this chapter, or
3 terminate any registration or certificate issued under this
4 chapter, for any cause authorized by law, including but not
5 limited to the following:

- 6 (1) Making any misrepresentation concerning any real
7 estate transaction;
- 8 (2) Making any false promises concerning any real estate
9 transaction of a character likely to mislead another;
- 10 (3) Pursuing a continued and flagrant course of
11 misrepresentation, or making of false promises through
12 advertising or otherwise;
- 13 (4) Without first having obtained the written consent to
14 do so of both parties involved in any real estate
15 transaction, acting for both the parties in connection
16 with the transaction, or collecting or attempting to
17 collect commissions or other compensation for the
18 licensee's services from both of the parties;
- 19 (5) When the licensee, being a real estate salesperson,
20 accepts any commission or other compensation for the
21 performance of any of the acts enumerated in the
22 definition set forth in section 467-1 of real estate



1 salesperson from any person other than the real estate
2 salesperson's employer or the real estate broker with
3 whom the real estate salesperson associates or, being
4 a real estate broker or salesperson, compensates one
5 not licensed under this chapter to perform any such
6 act;

7 (6) When the licensee, being a real estate salesperson,
8 acts or attempts to act as a real estate broker or
9 represents, or attempts to represent, any real estate
10 broker other than the real estate salesperson's
11 employer or the real estate broker with whom the real
12 estate salesperson is associated;

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

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

18 (9) When the licensee, being a partnership, permits any
19 member of the partnership who does not hold a real
20 estate broker's license to actively participate in the
21 real estate brokerage business thereof or permits any
22 employee thereof who does not hold a real estate



1 salesperson's license to act as a real estate

2 salesperson therefor;

3 (10) When the licensee, being a corporation, permits any
4 officer or employee of the corporation who does not
5 hold a real estate broker's license to have the direct
6 management of the real estate brokerage business
7 thereof or permits any officer or employee thereof who
8 does not hold a real estate salesperson's license to
9 act as a real estate salesperson therefor;

10 (11) When the licensee, being a real estate salesperson,
11 fails to file with the commission a written statement
12 setting forth the name of the real estate broker by
13 whom the licensee is employed or with whom the
14 licensee is associated;

15 (12) When the licensee fails to obtain on the contract
16 between the parties to the real estate transaction
17 confirmation of who the real estate broker represents;

18 (13) Violating this chapter; chapter 484, 514A, 514B, 514E,
19 or 515; section 516-71; or the rules adopted pursuant
20 thereto;

21 (14) Splitting fees with or otherwise compensating others
22 not licensed hereunder for referring business;



1 provided that notwithstanding paragraph (5), a real
2 estate broker may pay a commission to:

3 (A) A licensed real estate broker of another state,
4 territory, or possession of the United States if
5 that real estate broker does not conduct in this
6 State any of the negotiations for which a
7 commission is paid;

8 (B) A real estate broker lawfully engaged in real
9 estate brokerage activity under the laws of a
10 foreign country if that real estate broker does
11 not conduct in this State any of the negotiations
12 for which a commission is paid; or

13 (C) A travel agency that in the course of business as
14 a travel agency or sales representative, arranges
15 for compensation the rental of a transient
16 vacation rental; provided that for purposes of
17 this paragraph "travel agency" means any person
18 that, for compensation or other consideration,
19 acts or attempts to act as an intermediary
20 between a person seeking to purchase travel
21 services and any person seeking to sell travel
22 services, including an air or ocean carrier;



- 1 (15) Commingle the money or other property of the
- 2 licensee's principal with the licensee's own;
- 3 (16) Converting other people's moneys to the licensee's own
- 4 use;
- 5 (17) The licensee is adjudicated insane or incompetent;
- 6 (18) Failing to ascertain and disclose all material facts
- 7 concerning every property for which the licensee
- 8 accepts the agency, so that the licensee may fulfill
- 9 the licensee's obligation to avoid error,
- 10 misrepresentation, or concealment of material facts;
- 11 provided that for the purposes of this paragraph, the
- 12 fact that an occupant has AIDS or AIDS Related Complex
- 13 (ARC) or has been tested for HIV (human
- 14 immunodeficiency virus) infection shall not be
- 15 considered a material fact;
- 16 (19) When the licensee obtains or causes to be obtained,
- 17 directly or indirectly, any licensing examination or
- 18 licensing examination question for the purpose of
- 19 disseminating the information to future takers of the
- 20 examination for the benefit or gain of the licensee;



1 (20) Failure to maintain a reputation for or record of
2 competency, honesty, truthfulness, financial
3 integrity, and fair dealing; [~~or~~]

4 (21) When the licensee, also being a notary public
5 commissioned under chapter 456, notarizes any document
6 relating to a real estate transaction in which the
7 licensee is involved as a real estate broker or real
8 estate salesperson; or

9 [~~+(21)+~~] (22) Acquiring an ownership interest, directly or
10 indirectly, or by means of a subsidiary or affiliate,
11 in any distressed property that is listed with the
12 licensee or within three hundred sixty-five days after
13 the licensee's listing agreement for the distressed
14 property has expired or is terminated. As used in
15 this [~~section 7~~] paragraph, "distressed property" has
16 the same meaning as set forth in section 480E-2.

17 Disciplinary action may be taken by the commission whether
18 the licensee is acting as a real estate broker, or real estate
19 salesperson, or on the licensee's own behalf."

20 SECTION 3. Section 467-25, Hawaii Revised Statutes, is
21 amended to read as follows:



1 "**§467-25 Disciplinary action against licensee.** (a)
2 Nothing contained herein shall limit the authority of the real
3 estate commission to take disciplinary action against any
4 licensee for a violation of this chapter, or the rules and
5 regulations of the commission; nor shall the repayment in full
6 of all obligations to the real estate recovery fund by any
7 licensee nullify or modify the effect of any other disciplinary
8 proceeding brought pursuant to this chapter.

9 (b) Notwithstanding any rule or policy to the contrary, a
10 violation of section 467-14(21), at a minimum, shall result in
11 the suspension of the licensee's license for a period of
12 years."

13 SECTION 4. This Act does not affect rights and duties that
14 matured, penalties that were incurred, and proceedings that were
15 begun, before its effective date.

16 SECTION 5. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.

18 SECTION 6. This Act shall take effect upon its approval.

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INTRODUCED BY: *Clerena A. Fuschillo*

Report Title:

Real Estate Brokers and Salespersons; Notaries Public

Description:

Prohibits real estate brokers and salespersons, who are notaries public, from notarizing documents related to real estate transactions in which they are involved as real estate brokers or salespersons. Establishes penalty as suspension of commission for a period of years.

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