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## 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 re-registration 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 re-registration 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 re-registration 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 valuable consideration, acts as an agent for the  
11 management of more than three separate dwelling units owned by  
12 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. The term shall not include resident  
17 managers, whether residing on-site or off-site, who are not  
18 responsible for the collection of rental payments from tenants."

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



1            "\"Custodian or caretaker\" means any individual, who for  
 2 compensation or valuable consideration, is employed as an  
 3 employee by a single owner and has the responsibility to manage  
 4 or care for that real property left in the individual's trust;  
 5 provided that the term \"custodian\" or \"caretaker\" shall not  
 6 include any individual who [~~leases~~]:

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

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

13           (3) Manages real property and collects rental payments on  
 14 behalf of a landlord or owner as a rental property  
 15 manager as defined in section 521-8."

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

18           "**§467-2 Exceptions.** The provisions requiring licensing as  
 19 a real estate broker or salesperson shall not apply:

20           (1) To any individual who, as owner of any real estate or  
 21 acting under power of attorney from the owner,  
 22 performs any of the acts enumerated in the definitions



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

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

21 (3) To any ~~individual who leases, offers to lease, rents,~~  
22 ~~or offers to rent, any real estate or the improvements~~



1           ~~thereon of which the individual is the]~~ custodian or  
 2           caretaker; provided that a custodian or caretaker  
 3           shall not include a rental property manager as defined  
 4           in section 521-8;

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

7           (5) To any provider agency owning, leasing, operating, or  
 8           managing a homeless facility or any other program for  
 9           the homeless authorized under part XVII of chapter  
 10          346."

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

13          "**§467-14 Revocation, suspension, and fine.** In addition to  
 14          any other actions authorized by law, the commission may revoke  
 15          any license issued under this chapter, suspend the right of the  
 16          licensee to use the license, fine any person holding a license,  
 17          registration, or certificate issued under this chapter, or  
 18          terminate any registration or certificate issued under this  
 19          chapter, or chapter 521 in the case of rental property managers,  
 20          for any cause authorized by law, including but not limited to  
 21          the following:



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



1 not licensed under this chapter to perform any such  
2 act;

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

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

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

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

21 (10) When the licensee, being a corporation, permits any  
22 officer or employee of the corporation who does not



1 hold a real estate broker's license to have the direct  
2 management of the real estate brokerage business  
3 thereof or permits any officer or employee thereof who  
4 does not hold a real estate salesperson's license to  
5 act as a real estate salesperson therefor;

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

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

14 (13) Violating this chapter; chapter 484, 514A, 514B, 514E,  
15 or 515; chapter 521 when acting as a rental property  
16 manager on behalf of a landlord; section 516-71; or  
17 the rules adopted pursuant thereto;

18 (14) Splitting fees with or otherwise compensating others  
19 not licensed hereunder for referring business;  
20 provided that notwithstanding paragraph (5), a real  
21 estate broker may pay a commission to:



- 1 (A) A licensed real estate broker of another state,  
2 territory, or possession of the United States if  
3 that real estate broker does not conduct in this  
4 State any of the negotiations for which a  
5 commission is paid;
- 6 (B) A real estate broker lawfully engaged in real  
7 estate brokerage activity under the laws of a  
8 foreign country if that real estate broker does  
9 not conduct in this State any of the negotiations  
10 for which a commission is paid; or
- 11 (C) A travel agency that in the course of business as  
12 a travel agency or sales representative, arranges  
13 for compensation the rental of a transient  
14 vacation rental; provided that for purposes of  
15 this paragraph "travel agency" means any person  
16 that, for compensation or other consideration,  
17 acts or attempts to act as an intermediary  
18 between a person seeking to purchase travel  
19 services and any person seeking to sell travel  
20 services, including an air or ocean carrier;
- 21 (15) Commingling the money or other property of the  
22 licensee's principal with the licensee's own;



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



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

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

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

12       SECTION 6. Statutory material to be repealed is bracketed  
 13 and stricken. New statutory material is underscored.

14       SECTION 7. This Act shall take effect upon its approval.

15

INTRODUCED BY: OLY. 2 (BR)

JAN 20 2011





**Report Title:**

Rental Property; Rental Property Manager; Licensing

**Description:**

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

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

