

# SB3002

Measure Title: RELATING TO REAL ESTATE BROKERS AND SALESPERSONS.

Report Title: Real Estate Brokers and Salespersons; Licensing and Penalties

Description: Clarifies the language regarding the licensing penalties of real estate brokers and salespersons. Allows the real estate commission to revoke, suspend, or fine any person holding a real estate license, registration, or certificate for negligently or intentionally making misrepresentations or false promises concerning any real estate transaction or negligently or intentionally failing to disclose certain information.

Companion:

Package: None

Current Referral: CPN, JDL

Introducer(s): KAHELE, SHIMABUKURO, Kidani, Wakai

<b><u>Sort by Date</u></b>		<b>Status Text</b>
1/25/2012	S	Introduced.
1/27/2012	S	Passed First Reading.
1/27/2012	S	Referred to CPN, JDL.
1/31/2012	S	The committee(s) on CPN has scheduled a public hearing on 02-10-12 9:00AM in conference room 229.



NEIL ABERCROMBIE  
GOVERNOR

BRIAN SCHATZ  
LT. GOVERNOR

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KEALI'I S. LOPEZ  
DIRECTOR

PRESENTATION OF  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
REGULATED INDUSTRIES COMPLAINTS OFFICE

TO THE SENATE COMMITTEE ON  
COMMERCE AND CONSUMER PROTECTION

TWENTY-SIXTH STATE LEGISLATURE  
REGULAR SESSION, 2012

FRIDAY, FEBRUARY 10, 2012  
9:00 A.M.

TESTIMONY ON SENATE BILL NO. 3002  
RELATING TO REAL ESTATE BROKERS AND SALESPERSONS

TO THE HONORABLE ROSALYN H. BAKER, CHAIR,  
AND TO THE HONORABLE BRIAN T. TANIGUCHI, VICE CHAIR,  
AND MEMBERS OF THE COMMITTEE:

The Regulated Industries Complaints Office ("RICO") of the Department of Commerce and Consumer Affairs appreciates the opportunity to testify on Senate Bill No. 3002, Relating To Real Estate Brokers and Salespersons. My name is Daria Loy-Goto, RICO's Acting Complaints and Enforcement Officer. RICO offers the following comments.

Senate Bill No. 3002 amends §467-14, Hawaii Revised Statutes, to add a state-of-mind requirement (negligent or intentional) as grounds for disciplinary

action for misrepresentations, false promises, and failure to ascertain and disclose material facts by real estate brokers and salespersons.

Under current law, RICO investigates complaints alleging misrepresentations, false promises, or failure to ascertain and disclose material facts by a real estate licensee, whether the actions were intentional or unintentional. Correspondingly, the impact to a consumer who is harmed by a licensee's misconduct is the same whether the misconduct was intentional or unintentional.

Senate Bill No. 3002 would limit the types of cases that are prosecuted to those in which the licensee acted negligently or intentionally. RICO is concerned that this limiting language: 1) unnecessarily restricts the Real Estate Commission's ("Commission") ability to respond to conduct that may place consumers at risk; 2) will make violations more difficult to prosecute; and (3) is inconsistent with national standards of conduct.

First, the bill would preclude RICO from investigating and prosecuting all allegations of misrepresentation and concentrate only on those instances where misrepresentations, false promises, and failure to ascertain or disclose material facts are alleged to have occurred negligently or intentionally. As the enforcement arm for the Commission, RICO should be able to investigate all consumer complaints involving misrepresentation, regardless of the state of mind of the licensee, and the Commission should have the authority to review all instances of alleged misconduct and take appropriate action without qualification. Consumers

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who are harmed by a licensee's misrepresentation deserve no less oversight from the governing body.

Second, and from an enforcement perspective, Senate Bill No. 3002 would prolong RICO's investigations and complicate its prosecutions. Investigations would need to include specific evidentiary proof of negligence or intent and any resulting prosecution would now need to focus on satisfying these elements, all of which would delay any redress to consumers. RICO believes that a licensee's state of mind when making the misrepresentation or false promise is more appropriately related to the issue of sanctions imposed by the Commission for the unlawful conduct. For example, a real estate licensee who has intentionally misrepresented information may be subject to more serious sanctions by the Commission.

Finally, RICO notes that Senate Bill No. 3002 also conflicts with national professional standards that govern real estate brokers and salespersons. Under the Code of Ethics for the National Association of Realtors, realtors must avoid misrepresentation without qualification. This bill would lower the standards of practice for Hawaii licensees as currently established by the National Association of Realtors.

Thank you for this opportunity to testify on Senate Bill No. 3002. I will be happy to answer any questions that the members of the Committee may have.

**PRESENTATION OF THE  
REAL ESTATE COMMISSION**

**TO THE SENATE COMMITTEE ON  
COMMERCE AND CONSUMER PROTECTION**

**TWENTY-SIXTH LEGISLATURE  
Regular Session of 2012**

**Friday, February 10, 2012  
9:00 a.m.**

**TESTIMONY ON SENATE BILL NO. 3002 - RELATING TO REAL ESTATE  
BROKERS AND SALESPERSONS.**

**TO THE HONORABLE ROSLYN H. BAKER, CHAIR,  
AND MEMBERS OF THE COMMITTEE:**

My name is Carol Ball and I am the Chairperson of the Hawaii Real Estate Commission ("Commission"). The Commission appreciates the opportunity to present testimony on Senate Bill No. 3002, Relating to Real Estate Brokers and Salesperson, and opposes this measure for the following reasons.

Senate Bill No. 3002 creates higher standards the Commission must establish before taking disciplinary action for the following current provisions in Chapter 467-14, Hawaii Revised Statutes ("HRS"):

- making any misrepresentation concerning any real estate transaction;
- making any false promises concerning any real estate transaction of a character likely to mislead another; and
- failing to ascertain and disclose all material facts so that the licensee may fulfill the licensee's obligation to avoid errors.

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The Commission's legislatively defined purpose in Section 467-4, HRS, clearly states that the purpose of the Commission "is the protection of the general public in its real estate transactions." In its effort to protect the public, the legislature outlined the aforementioned prohibited acts and allowed the Commission to investigate whether or not the licensee violated those acts, not how they were committed. These proposed standards would lower the regulatory powers of the Commission and further lower the professionalism of the industry.

For the aforementioned reasons, the Commission opposes Senate Bill No. 3002. Thank you for the opportunity to testify.



# Honolulu Board of REALTORS®

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February 10, 2012

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## The Honorable Rosalyn H. Baker, Chair

Senate Committee on Commerce and Consumer Protection  
State Capitol, Room 229  
Honolulu, Hawaii 96813

**RE: S.B. 3002, Relating to Real Estate Brokers and Salespersons**

**HEARING: Friday, February 10, 2012, 9:00 am**

Dear Chair Baker, Vice Chair Taniguchi, and Members of the Committee:

Thank you for the opportunity to speak in support of Senate Bill 3002 which if passed, strengthens and clarifies the standard which will be applied in protecting the interests of the consumer.

My name is Joyce Nakamura, a real estate agent with Coldwell Banker Pacific Properties and here as the Immediate Past President of the Honolulu Board of REALTORS®, an O'ahu Association of 5500 members.

There is currently insufficient information on the standards used by the Real Estate Commission in determining revocation, suspensions and fines for licensees. Lacking clear and transparent standards that apply to all violators creates an environment of uncertainty for the public as well as for the licensee.

The Honolulu Board of REALTORS® supports the rights and protections of consumers and recognizes that government has a role in providing some of these protections. In addition to what government provides, the Honolulu Board and all of the Neighbor Island REALTORS® subscribe to the National Association of REALTORS® Code of Ethics and Standards of Practice. The Code and Standards are what distinguish REALTORS® and have been our tradition for over 50 years.

HBR believes that the consumers' interest is best represented when the rules and standards that are created to protect the public, are clear to everyone concerned and are consistent in their application.

The current language is very broad and the Real Estate Commission interprets most issues broadly. What becomes troublesome from a consumer perspective is the lack of standards and consistency in how and when different standards will apply.

Establishing these clear standards should not diminish the regulatory powers or the authority of the Real Estate Commission.

For the reasons noted above, the Honolulu Board of REALTORS® strongly supports passage of SB 3002.

I welcome any questions you may have and would like to introduce Suzanne Young, HBR's Director of Programs who can assist in responding to questions the Committee may have. Thank you.



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February 10, 2012

**The Honorable Rosalyn H. Baker, Chair**  
Senate Committee on Commerce and Consumer Protection  
State Capitol, Room 229  
Honolulu, Hawaii 96813

**RE: S.B. 3002, Relating To Real Estate Brokers and Salespersons**

**HEARING: Friday, February 10, 2012, at 9:00 a.m.**

Aloha Chair Baker, Vice Chair Taniguchi, and Members of the Committee:

I am Myoung Oh, Government Affairs Director, here to testify on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its 8,500 members. HAR **strongly supports** S.B. 3002, which clarifies the language regarding the licensing penalties of real estate brokers and salespersons and also clarifies that the Real Estate Commission may revoke, suspend, or fine any person holding a real estate license, registration or certificate for negligently or intentionally making misrepresentations or false promises concerning any real estate transaction or negligently or intentionally failing to ascertain and disclose material facts.

HAR believes that this measure will help to clarify the revocation, suspension and fine provisions for real estate broker or salespersons by providing a clear legal standard. For a real estate broker or salesperson, this would mean that a licensee would be found to violate the law if they failed to exercise the reasonable care that a real estate broker or salesperson would exercise in similar circumstances. Imposing this standard would not mean that the Real Estate Commission's power to enforce violations would disappear. It would merely enact a reasonable standard by which the Commission must act, rather than the current strict liability standard that currently exists in the law for any violation, no matter how inconsequential.

S.B. 3002 proposes to provide a clearer standard to govern real estate brokers or salespersons. HAR further believes that it is helpful to the profession as a whole to set a clear and objective way to determine whether a violation has occurred.

For the foregoing reasons, HAR respectfully requests your favorable passage of this measure.

Mahalo for the opportunity to testify.

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