



**Prudential Locations LLC**  
Real Estate Sales and Research  
614 Kapahulu Avenue, Suite 200, Honolulu, HI 96815  
Bus 808 735-4200 Fax 808 732-5096  
www.PrudentialLocations.com

**SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION  
TESTIMONY IN SUPPORT OF  
SB 3002 RELATING TO REAL ESTATE BROKERS AND SALESPERSONS**

Testimony of  
Prudential Locations LLC  
Friday, February 10, 2012, 9:00 a.m.  
Senate Conference Room 229

Chair Baker and members of the Committee:

Prudential Locations LLC ("Prudential Locations") **strongly supports SB 3002.** Prudential Locations is a multi-faceted real estate company that started in 1969. Over the last forty years, Prudential Locations has established itself as a leader in the real estate industry, with over 250 real estate brokers and salespersons. We have been in business for over 40 years, handled over a 100,000 transactions, and, throughout that time, had a nearly perfect record with DCCA.

Currently, real estate brokers and salespersons unfairly face **strict liability** for any errors or omissions in connection with real estate transactions. This means they can be charged with wrongdoing even if they are diligent, honest, and capable; even if they are the unwitting and innocent victims of mistakes or misrepresentations by their clients; even if they do nothing wrong at all! The reality under this standard is harsh—the Real Estate Commission can revoke or suspend a real estate broker's or salesperson's license or fine a real estate broker or salesperson regardless of fault.

No one would think of disciplining doctors, dentists, lawyers, or government officials when they have not been negligent or guilty of reckless or intentional wrongdoing. And, nearly all licensed professionals in Hawai'i face discipline under some fault-based standard (e.g., Motor Vehicle Licensing, Motor Vehicle Repairs, Chiropractic, Contractors, Dental Hygienists, Dentistry, Hearing Aid Dealers and Fitters, Secure and Fair Enforcement for Mortgage Licensing Act, Notaries Public, Pest Control Operators, Physical Therapy Practice Act, Pilotage, Podiatrists, Psychologists, Solicitation of Funds from the Public, Travel Agencies (Charter Tour Operators), and Alarm Business).

However, real estate brokers and salespersons, face strict liability. Under the law as currently written and as currently being enforced by the DCCA, a broker can be disciplined for "making" a statement that is found after the fact to be false even if she acted reasonably and ethically in:

- Relaying information from a reputable property inspector about the condition of electrical wiring
- Sharing information obtained from a seller—and believed to be accurate—about the amounts owed for maintenance and utilities
- Reporting information obtained from a contractor with a good reputation about past renovations done to the home
- Passing on the seller's disclosure (done pursuant to the Disclosure Law) that is found to be inaccurate because the seller was ignorant or lying in ways not known to the broker.
- Reporting information from a lawyer about a pending legal dispute

In short, if a broker, acting with perfect diligence and honesty, "makes" a misrepresentation due to misinformation innocently received from a seller, a termite inspector, a contractor, a lawyer, or a title company, he/she is at risk of being punished by RICO and DCCA.

Why? It makes no sense. It is not fair.

We are not suggesting—in any way—that licensees should not be punished if they are negligent, reckless, or guilty of intentional wrongdoing. They should—without question. But, no one should be at risk of losing their license when they have been honest, diligent, and competent.

The proposed changes to Haw. Rev. Stat. § 467-14 would clearly define the legal standard to be applied by the Real Estate Commission and DCCA in imposing penalties against real estate brokers and agents—a standard that is consistent with other licensing regimes. The proposed changes do not impose unreasonable burdens on the Commission in taking disciplinary action or reduce the powers of the Commission; rather, the proposed changes simply create a fair standard of behavior for real estate brokers and agents.

Let me give you an example of how unfair the present system is. Recently, two licensees with unblemished records who have been working in the industry for more than 25 years were cited by the Regulated Industry Complaint Office for misrepresenting that utilities were included in maintenance fees for a condo unit. How did it happen? The seller said the utilities were included and reported that in her mandatory disclosure. The brokers had no reason to believe otherwise. They truthfully told the buyer that the information was believed to be accurate. Unfortunately—unbeknownst to the brokers—the seller had given them bad information.

Nevertheless, RICO charged these brokers (but not the agent who handled the sale) with wrongdoing and demanded they be sanctioned. In fact, it demanded that one of them, who was indirectly supervising the sale, should lose her license and be found guilty of failing to maintain a reputation for honesty (again, despite decades of blemish-free work)—without any proof that they were negligent, careless, reckless, or dishonest. That is not protecting consumers; it is unreasonable.

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We are not seeking to change the course of those proceedings. This amendment should have only prospective application.

Prudential Locations recognizes the importance of licensing penalties in order to protect the general public in real estate transactions. SB 3002 does not—in any way—undermine this goal. And, SB 3002 certainly does not eliminate penalties against real estate brokers and salespersons. SB 3002 merely establishes an appropriate standard of liability for specific types of misconduct.

Thank you for the opportunity to testify on this matter.