
March 16, 2016

The Honorable Angus McKelvey, Chair

House Committee on Consumer Protection and Commerce
State Capitol, Room 325
Honolulu, Hawaii 96813

RE: S.B. 2328, S.D.1, Relating to Real Estate Licensee Advertising

HEARING: Wednesday, March 16, 2016 at 2:05 p.m.

Aloha Chair McKelvey, Vice Chair Woodson, and Members of the Committee:

I am Moana Andersen, President of the Hawaii Association of REALTORS®, here to testify as the voice of real estate in Hawai'i, and its 8,800 members. HAR **strongly supports** S.B. 2328, S.D.1 which provides definitions of "advertising" and "solicitation materials" as they apply to the regulation of real estate brokers and salespersons and specifies information that must be included on advertising and solicitation materials.

In 2015, the Real Estate Commission proposed Hawai'i Administrative Rules for Chapter 16-99-11. Under the proposed rules, among other things, brokerages and/or real estate licensees would be required to include their license number on "all advertising and promotional materials." However, a clear definition of advertising and promotional materials and how such materials can be used does not currently exist in either Chapter 467 or the proposed rules.

Traditional advertising and marketing materials include business cards, brochures, flyers, newspaper and magazine ads, lawn signs and electronic media, such as email messages and websites. The inclusion of a license number on these items assists the consumer because important identifying information (along with a licensee name or brokerage name) is included. These items are marketing tools intended to solicit business which may trigger action or interest by consumers – and providing licensee information on these materials provides a level of protection for consumers.

However, there is a difference between marketing materials that are intended to solicit business, and other branded items that are not intended to do so. Under the proposed rules, promotional items like logoed baseball caps, shirts and pens could require licensees to display a license number. In addition, agent name tags (identifying mechanisms rather than marketing material) might have to require this information. These types of items do not present the same concerns to the public. For example, a name tag merely facilitates conversation, and if a consumer wishes to have further

contact or discuss real estate services, the licensee would present his/her business card as the material that would be intended to solicit business.

Another item that would be impacted without the passage of this bill is office signs. Many brokers have a trademarked service logo which is maintained at significant cost. It usually is a specific graphic design and color scheme that is registered with the United States Patent and Trademark Office. Imposing a license number upon office signs may violate the integrity of the service mark and could raise legal issues as well as additional costs.

In summary, this bill proposes to provide a definition for advertising and clarify what is considered advertising and what is not. Without this definition, real estate licensees may be at risk to be cited for licensing violations for any and all promotional materials, despite a real estate licensee or brokerage firm's best efforts to comply with the law.

HAR supports efforts to enhance the practice of real estate and protect Hawaii's consumers. Our Code of Ethics is the cornerstone of REALTOR® membership and we train members in high ethical standards in both their dealings with the public and within the real estate community. As such, HAR believes that providing a clear definition of advertising and solicitation materials for real estate licensees and specifying how such advertising materials can be used is important to both real estate licensees and consumers.

While we continue to be open to alternative approaches to resolving this issue, we would respectfully request that the committee pass this bill, with the amendments suggested below, to continue the discussion on this important issue.

Based upon comments raised by the REC about the measure, as well as our own review of the current draft of the measure, we would ask that the following amendments be made:

1) Section 3 – additional amendments to clarify the definition of “advertising”:

“Advertising” means solicitation materials intended ~~to be the first point of contact with consumers and designed~~ to solicit the creation of a professional **real estate** relationship between the licensee and a consumer or solicitation materials intended to incentivize, induce, or entice a consumer to contact the licensee about any services for which a real estate license is required provided that “advertising” does not include items designed to create general awareness of the individual licensee or brokerage firm licensee, including but not limited to promotional items, such as hats,

clothing, pins, pens, memo pads, name badges, and office signage identifying a brokerage's principal place of business and branch office.

"Solicitation materials" includes **but is not limited to** the following:

- (1) Business cards;
- (2) Business letterhead stationary;
- (3) Websites owned, controlled, or maintained by the soliciting real estate licensee;
- (4) Advertising flyers, leaflets, and brochures;
- (5) Newspaper, **and** magazine, and **website** advertisements;
- (6) Electronic mail messages; and
- (7) Lawn and automobile signage."

2) Section 5 – delayed effective date for transition and implementation:

SECTION 5. This Act shall take effect **on January 1, 2017 upon its approval.**



REALTORS[®]
*Association of
Maui, Inc.*

441 Ala Makani Place
Kahului, Maui, HI 96732-3507
Phone: 808-243-8585 ~ Fax: 808-243-8585
Dave DeLeon, Government Affairs Director
Cell: 808-281-3269
E-mail: GAD@RAMaui.com
www.RAMaui.com

March 16, 2016

The Honorable Angus McKelvey, Chair
House Committee on Consumer Protection and Commerce
State Capitol, Honolulu, Hawaii

Re: Testimony in SUPPORT of SB 2328 SD1, Relating to Real Estate Licensee Advertising

HEARING: Wednesday, March 16, 2016 at 2:05 p.m. at Room 325

Aloha. I am David DeLeon, Government Affairs Director for the Realtors Association of Maui, testifying in support of Senate Bill 2328 SD1. This bill clarifies in Chapter 467 the difference between advertising materials meant to solicit clients and branding materials meant to promote general name recognition of a particular company.

In 2015, the State Real Estate Commission promulgated rules meant to require that brokerages and real estate agents include their state-issued license numbers on "all advertising and promotional materials." However, the proposed language lacked a clear distinction between advertising materials that are meant to attract clients in order to create a business relationship and materials meant strictly to promote the existence of a business entity. Likewise, Chapter 467 does not make that distinction. Senate Bill 2328 SD1 is meant to correct that oversight.

Advertising and marketing materials are meant to attract clients for a brokerage firm or an agent and may include business cards, brochures, flyers, media ads, lawn signs, email messages and websites. We support the inclusion of license numbers on these materials because they promote the creation of the professional-client relationship, for which the professional is licensed. Arming the consumer with the professional's license number provides the consumer with important information about the relationship.

However, RAM does not agree that such protection needs to extend to materials meant strictly to promote a company's image or brand. Those materials are aimed at the general public and not necessarily clients. Including license numbers on promotional logo caps, shirts, pens, or office signs does not provide a client with any additional consumer information or protection.

Correcting the language governing our industry as proposed in this bill will help pre-empt any confusion over this distinction in the future. Mahalo for your support of SB 2328 SD1.

**Testimony of
Gary M. Slovin / Mihoko E. Ito
on behalf of
Hawaii Association of Realtors**

DATE: March 15, 2016

TO: Representative Angus McKelvey
Chair, Committee on Consumer Protection & Commerce

Submitted Via CPCtestimony@capitol.hawaii.gov

RE: **S.B. 2328, S.D.1 – Relating to Real Estate Licensee Advertising**
Hearing Date: Wednesday, March 16, 2016 at 2:05 p.m.
Conference Room: 325

Dear Chair McKelvey and Members of the Committee on Consumer Protection and Commerce:

We offer this testimony as government affairs counsel for the Hawaii Association of Realtors (“HAR”) in **support** of S.B. 2328, S.D.1. This bill provides definitions for and imposes reasonable regulations on advertising and solicitation materials for real estate licensees.

This measure is necessary to address a section of the recent proposed rules promulgated by the Real Estate Commission with respect to advertising. Under the proposed rules, the current definition of advertising would impose strict liability on all real estate licensees for failure to put a license number on all advertising and promotional materials. If a licensee failed to comply with the rule, no matter how small the item (pens, hats, t-shirts, etc.), under the proposed rule the licensee could be reported to RICO and would have no defense for failing to put a license number on such items. Without some accommodation for certain smaller promotional materials, this would be a stricter standard imposed on real estate professionals than any other licensed profession either in Hawaii or in any other state.

S.B. 2328, S.D.1, with the amendments requested by HAR, is a reasonable fix to this issue by providing clear guidelines that certain materials, like business cards, paid advertisements, and lawn signs must contain a license number for consumer protection

Gary M. Slovin
Mihoko E. Ito
C. Mike Kido
Tiffany N. Yajima

999 Bishop Street, Suite 1400
Honolulu, HI 96813
(808) 539-0840

purposes. At the same time, based upon language modeled after the California law, the bill excludes the smaller promotional items that do not raise the same concerns.

Without addressing the proposed rule, licensees would be potentially exposed to bad faith complaints that may be asserted by unethical competitors or members of the public acting out for personal reasons. From a practitioner's point of view, the problem is not ultimately prevailing against a frivolous or bad faith complaint, but having to incur the time, distraction, and expense of defending against these claims.

We respectfully submit that the language in S.B. 2328, S.D.1, with amendments, will strike an appropriate balance between protecting consumers and provide certainty for the industry to maintain ethical practices without unnecessary fear of being prosecuted.

Thank you for the opportunity to testify in support of this bill.



RBO-16781

KAPOLEI COMMONS
4460 KAPOLEI PARKWAY, SUITE 310
KAPOLEI, HI 96707
BUSINESS (808) 597-5550
FAX (808) 748-4529
www.coldwellbankerhomes.com

March 16, 2016

The Honorable Angus McKelvey, Chair
House Committee on Consumer Protection and Commerce
State Capitol, Room 325
Honolulu, Hawaii 96813

Re: S.B. 2328, S.D.1, Relating to Real Estate Licensee Advertising

HEARING: Wednesday, March 16, 2016 at 2:05 a.m.

Aloha Chair McKelvey, Vice Chair Woodson and Members of the Committee:

I am Kalama Kim, Principal Broker with Coldwell Banker Pacific Properties and I am testifying as a real estate broker and member of the brokerage community. I strongly support S.B. 2328, S.D.1 which provides the definitions of "advertising" and "solicitation materials" as they apply to the regulation of real estate brokers and salespersons and specifies information that must be included on advertising and solicitation materials.

Let me start by saying that I also support including license numbers on advertising materials. Our brokerage firm has already paid for new signage and business cards for our 400+ licensees. We have also taken steps to include license numbers in advertising by holding training classes to change their websites, email signatures and such. Additionally, we provided them with vendors to order decals to add to their current materials that they may have in their possession or out in the public. The forewarning that the advertising rules would change allowed us to make such preparations. That said, during our preparation we found it extremely difficult to find a solution for brand awareness items like pens, polo shirts and even mints that we hand out at community events. Only then did we realize the hardship the revised rule would create if it was not clarified to exclude those items. If the revision to the rule is imposed on us, we may have to eliminate those items during community events or delay participation in events. S.B. 2328 would provide the clarification needed and the solution to this issue.

We also support S.B. 2328 because during our research and in preparation for the rule change, we found that the other states where our parent company operates are not subject to all-encompassing advertising rules like the proposed rule revision. States like California do not required license numbers on all advertising items such as open house directional signs.



RBO-16781

As one of the largest Brokerage Firms in the State of Hawaii, we have 5 offices on Oahu in visible locations which include visible signage. These signs serve the purpose of identifying our location to the public. They can easily identify our brokerage name and look up our licensing status or multitudes of information on the internet if during non-business hours. During business hours a reasonable member of the public would walk into the office and receive a business card, our office magazines or flyers, which include the licensee or brokerage license number. Unlike the proposed revised rule change, S.B. 2328 would allow this process flow to be compliant with advertising rules and requirements.

Coldwell Banker Pacific Properties supports S.B. 2328 and respectfully asks for your consideration on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Kalama Kim". The signature is fluid and cursive, with a large loop at the end.

Kalama Kim, REALTOR
Principal Broker
RB-19979

KAPOLEI COMMONS
4460 KAPOLEI PARKWAY, SUITE 310
KAPOLEI, HI 96707
BUSINESS (808) 597-5550
FAX (808) 748-4529
www.coldwellbankerhomes.com

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 15, 2016 1:57 PM
To: CPCtestimony
Cc: DMMacha@gmail.com
Subject: Submitted testimony for SB2328 on Mar 16, 2016 14:05PM

SB2328

Submitted on: 3/15/2016

Testimony for CPC on Mar 16, 2016 14:05PM in Conference Room 325

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| DARRYL MACHA | Individual | Support | No |

Comments: I am Darryl Macha, REALTOR®, with CENTURY 21 All Islands. License No. RB-20541. I strongly support SB 2328, SD1, which provides clarification of advertising in Chapter 467. In 2015, the State Real Estate Commission proposed Hawai'i Administrative Rules for Chapter 16-99-11, requiring brokerages and/or real estate licensees to include their state-issued license numbers on "all advertising and promotional materials." I would like to be very clear that I am not opposed to including license numbers, but the wide scope of this rule does not make a distinction between creating a business relationship versus promotional material that brands a company's image. The ability to have legislation that clarifies language that governs our industry and protects consumers assists everyone as we move forward. I appreciate your support of SB 2328, SD 1. Thank you!

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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LATE

LATE TESTIMONY

**PRESENTATION OF THE
REAL ESTATE COMMISSION**

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

**TWENTY-EIGHTH LEGISLATURE
Regular Session of 2016**

**Wednesday, March 16, 2016
2:05 p.m.**

**TESTIMONY ON SENATE BILL NO. 2328, S.D. 1, RELATING TO REAL ESTATE
LICENSEE ADVERTISING.**

**TO THE HONORABLE ANGUS L.K. MCKELVEY, CHAIR,
AND MEMBERS OF THE COMMITTEE:**

My name is Scott Sherley, and I am the Vice Chair of the Hawaii Real Estate Commission ("Commission"). The Commission opposes Senate Bill No. 2328, S.D.1, and proposes an amendment.

The purpose of this bill appears to attempt to codify and modify the current and proposed advertising requirement found in Hawaii Administrative Rules Chapter 99 ("Rules"). In June 2010, the Commission initiated the rule revision process and in 2012 included the requirement for licensees to prominently and conspicuously include the licensee's license number for all advertising and promotional material. There have been over 145 identified cases of unlicensed activity reported by the Regulated Industries Complaints Office ("RICO") over the last three years. This does not include any fraud, misrepresentation and/or identity theft cases for unlicensed activity. This new proposal was designed to help protect and aid consumers in clearly identifying licensees by their unique license number through the Professional and Vocational Licensing Division's

newcomers to the industry can succeed and understand what is required, but at the same time protecting the consumer in its real estate transactions. In this situation, although requiring the license number on all advertising and promotional material is the simplest most efficient way to protect the consumer, we understand the practical effects. As such, the Commission humbly requests the Committee to consider the addition of "intent" language to the bill as follows:

- "SECTION 2. Chapter 467, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

467 - Advertisement. (a) All real estate advertising and promotional materials that are intended to solicit the creation of a professional real estate relationship between the licensee and the consumer shall prominently and conspicuously include the legal name of the brokerage firm or a trade name previously registered by the brokerage firm with the business registration division and with the commission and the license number of the brokerage. The license number of the brokerage shall not be required for all advertising and promotional materials that comply with paragraph (e).

For advertising and promotional purposes only, a brokerage firm may:

Abbreviate "Incorporated". "Corporation". "Limited". "General Partnership". "Limited Partnership". "Limited Liability Company". or "Limited Liability Partnership" from the licensed name; and

(2) Use "dba" in conjunction with the licensed name and a trade name.

Testimony on Senate Bill No. 2328, S.D. 1
Wednesday, March 16, 2016
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The above revised language, including intent as a requirement, would provide increased consumer protection against unlicensed activity, while balancing any practical effects. For the reasons set forth herein, the Commission is opposed to Senate Bill No. 2328, S.D.1, as written and respectfully proposes the revised language above.

Thank you for the opportunity to present testimony on Senate Bill No. 2328, S.D. 1.