

JAN 20 2017

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# A BILL FOR AN ACT

RELATING TO REAL ESTATE BROKERS.

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

1           SECTION 1. The legislature finds that it is important for  
2 property management companies to utilize client trust accounts  
3 and to have clear and effective rules pertaining to client trust  
4 accounts to avoid any mismanagement or commingling of client  
5 funds. Currently, a real estate broker could mishandle accounts  
6 or abruptly terminate business without sufficient protections in  
7 place to safeguard client information and trust account funds.  
8 Thus, further safeguards are necessary to protect funds held in  
9 client trust accounts.

10           The legislature finds that criminal penalties are an  
11 effective means to deter real estate brokers from mishandling  
12 client trust accounts. The legislature further finds that the  
13 principal broker should be required to report client trust  
14 account information to the real estate commission to ensure  
15 accountability and client access to the information.

16           Accordingly, the purpose of this Act is to:



- 1           (1) Create criminal penalties for real estate brokers for  
2           improper deposit, segregation, or disposition of  
3           client trust account funds;
- 4           (2) Require the principal broker to report the client  
5           trust account number and name of the managing  
6           institution to the real estate commission;
- 7           (3) Require the principal broker to report changes in the  
8           account number and account location within ten days of  
9           a change; and
- 10          (4) Authorize the real estate commission to take action in  
11          circuit court to enforce requirements pertaining to  
12          client trust accounts.

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

16           "§467-      Criminal penalties. A person commits the  
17 criminal offense of theft if the person knowingly or  
18 intentionally violates this chapter or the rules adopted thereto  
19 related to the deposit, segregation, or disposition of client  
20 trust account funds."



1 SECTION 3. Section 467-1.6, Hawaii Revised Statutes, is  
2 amended by amending subsection (b) to read as follows:

3 "(b) The principal broker shall be responsible for:

4 (1) The client trust accounts, disbursements from those  
5 accounts, and the brokerage firm's accounting  
6 practices; provided that at the time of registration  
7 and renewal, the principal broker shall file with the  
8 commission the account number and the name of the  
9 financial institution at which the trust account is  
10 held, and the principal broker shall notify the  
11 commission of any change in the account number or  
12 location within ten days of the change;

13 (2) The brokerage firm's records, contracts, and  
14 documents;

15 (3) All real estate contracts of the brokerage firm and  
16 its handling by the associated real estate  
17 salesperson;

18 (4) The proper handling of any commission application,  
19 real estate license application, or renewal  
20 application that the principal broker or the brokerage  
21 firm expressly agrees to handle on behalf of the



- 1 applicant, including without limitation, verifying for  
2 completeness and appropriate fees, and mailing or  
3 delivering the appropriate documents to the commission  
4 by the required deadline;
- 5 (5) Developing policies and procedures for the brokerage  
6 firm concerning the handling of real estate  
7 transactions and the conduct of the associated real  
8 estate licensees and other staff, including education  
9 and enforcement of the policies and procedures;
- 10 (6) Setting a policy on continuing education requirements  
11 for all associated real estate licensees in compliance  
12 with the statutory requirement;
- 13 (7) Ensuring that the licenses of all associated real  
14 estate licensees and the brokerage firm license are  
15 current and active;
- 16 (8) Establishing and maintaining a training program for  
17 all associated real estate licensees; and
- 18 (9) Ensuring that all associated real estate licensees are  
19 provided information and training on the latest  
20 amendments to real estate licensing laws and rules as  
21 well as other related laws and rules."



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

3 "§467-4 Powers and duties of commission. In addition to  
4 any other powers and duties authorized by law, the real estate  
5 commission shall:

- 6 (1) Grant licenses, registrations, and certificates  
7 pursuant to this chapter;
- 8 (2) Adopt, amend, or repeal rules as it may deem proper to  
9 effectuate this chapter and carry out its purpose,  
10 which is the protection of the general public in its  
11 real estate transactions. All rules shall be approved  
12 by the governor and the director of commerce and  
13 consumer affairs, and when adopted pursuant to chapter  
14 91 shall have the force and effect of law. The rules  
15 may forbid acts or practices deemed by the commission  
16 to be detrimental to the accomplishment of the purpose  
17 of this chapter, and the rules may require real estate  
18 brokers and salespersons to complete educational  
19 courses or to make reports to the commission  
20 containing items of information as will better enable  
21 the commission to enforce this chapter and the rules,



1 or as will better enable the commission from time to  
2 time to amend the rules to more fully effect the  
3 purpose of this chapter, and, further, the rules may  
4 require real estate brokers and salespersons to  
5 furnish reports to their clients containing matters of  
6 information as the commission deems necessary to  
7 promote the purpose of this chapter. This enumeration  
8 of specific matters that may properly be made the  
9 subject of rules shall not be construed to limit the  
10 commission's broad general power to make all rules  
11 necessary to fully effectuate the purpose of this  
12 chapter;

13 (3) Enforce this chapter and rules adopted pursuant  
14 thereto[?], including the filing of any action in  
15 circuit court determined to be necessary by the  
16 commission to obtain an injunction or other  
17 appropriate order or judgment for the enforcement of  
18 any law or rule under this chapter relating to client  
19 trust accounts;

20 (4) Suspend, fine, terminate, or revoke any license,  
21 registration, or certificate for any cause prescribed



1 by this chapter, or for any violation of the rules,  
2 and may also require additional education or  
3 reexamination, and refuse to grant any license,  
4 registration, or certificate for any cause that would  
5 be a ground for suspension, fine, termination, or  
6 revocation of a license, registration, or certificate;

7 (5) Report to the governor and the legislature relevant  
8 information that shall include but not be limited to a  
9 summary of the programs and financial information  
10 about the trust funds, including balances and budgets,  
11 through the director of commerce and consumer affairs  
12 annually, before the convening of each regular  
13 session, and at other times and in other manners as  
14 the governor or the legislature may require concerning  
15 its activities;

16 (6) Publish and distribute pamphlets and circulars,  
17 produce seminars and workshops, hold meetings in all  
18 counties, and require other education regarding any  
19 information as is proper to further the accomplishment  
20 of the purpose of this chapter;



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1 (7) Enter into contract or contracts with qualified  
 2 persons to assist the commission in effectuating the  
 3 purpose of this chapter; and

4 (8) Establish standing committees to assist in  
 5 effectuating this chapter and carry out its purpose,  
 6 which shall meet not less often than ten times  
 7 annually, and shall from time to time meet in each of  
 8 the counties."

9 SECTION 5. This Act does not affect rights and duties that  
 10 matured, penalties that were incurred, and proceedings that were  
 11 begun before its effective date.

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.

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# S.B. NO. 394

**Report Title:**

Real Estate Brokers; Client Trust Accounts; Criminal Penalties;  
Real Estate Commission; Registration; Renewal; Enforcement

**Description:**

Creates criminal penalties for real estate brokers for improper deposit, segregation, or disposition of client trust account funds. Requires the principal broker to report the client trust account number and name of the managing institution to the real estate commission. Specifies that the principal broker must report changes in the account number and account location within ten days of a change. Authorizes the real estate commission to take action in circuit court to enforce client trust account requirements.

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

