

**PRESENTATION OF THE
REAL ESTATE COMMISSION**

TO THE HOUSE COMMITTEE ON
INTRASTATE COMMERCE

TWENTY-NINTH LEGISLATURE
Regular Session of 2017

Wednesday February 15, 2017
9:00 a.m.

TESTIMONY ON HOUSE BILL NO. 51, RELATING TO REAL ESTATE BROKERS.

TO THE HONORABLE TAKASHI OHNO, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Nikki Senter and I am the Chairperson of the Hawaii Real Estate Commission ("Commission"). The Commission appreciates the opportunity to present testimony in opposition to House Bill No. 51, Relating to Real Estate Brokers. This measure proposes to permit payment of commissions to an unlicensed, unregulated real estate corporation or partnership.

The purchase of a home in Hawaii is widely considered the largest investment a consumer will make during their lifetime. The legislature recognized the magnitude of this purchase and formed the Hawaii Real Estate Commission to protect the consumer through the regulation of those wishing to represent buyers, sellers, and owners of real estate as a vocation. The legislature codified this protection in Section 467-4, Hawaii Revised Statutes ("HRS") and mandated the Commission's purpose as "the protection of the general public in its real estate transactions."

The legislature believed that if anyone wants to practice real estate in the State of Hawaii such person, entity or individual, must be licensed. Under Section 467-7, HRS, the legislature required that "no person within the purview of this chapter shall act

as real estate broker or real estate salesperson, or shall advertise, or assume to act as real estate broker or real estate salesperson without a license previously obtained under and in compliance with this chapter and the rules and regulations of the real estate commission.”

The legislature further believed that someone should ultimately be responsible for the actions of the brokerage firm and placed this highly important burden on the principal broker of the brokerage firm. Additionally, each brokerage firm has one, and only one, principal broker. Commensurate with the magnitude of these responsibilities, the statutes and rules restrict the principal broker to manage one, and only one, brokerage firm. Section 467-1.6(a), HRS, ensures the principal broker of the brokerage firm is ultimately responsible for the “direct management and supervision of the brokerage firm and its real estate licensees.” Section 467-8, HRS, furthers this responsibility by mandating that no license shall be issued to any partnership, corporation, or limited liability company unless the real estate brokerage business is under the direct management of a principal broker.

Furthermore, in *Property House, Inc. v. Kelley* (1986), the Supreme Court of the State of Hawaii recognized the legislative intent of HRS Chapter 467, to regulate the activities of those persons or individuals wishing to practice real estate in Hawaii and reduce any risk of misconduct by those not licensed.

This measure as written undermines the regulatory licensing structure and statutory responsibilities of licensed entities and individuals. It raises more questions than answers, on regulating the unlicensed activities of entities: Who is responsible for

directing the work of the individual licensee? How does the current principal broker oversee the activities of the licensee? Does the individual licensee respond to its principal broker or the unlicensed entity paying its wages? Who is the licensee a fiduciary to: the clients of another brokerage firm; or the owners of the unlicensed entity? What if the principal broker and the unlicensed entity are in conflict? Who owns the unlicensed entity? Can unlicensed individuals direct the work of a licensee through their position in the unlicensed entity? Will the Regulated Industries Complaints Office be able to prosecute an unlicensed entity for the unlicensed practice of real estate? Who is responsible if the unlicensed entity is sued? Is the consumer protected through the Real Estate Recovery Fund if the unlicensed entity is sued for fraud, misrepresentation, or deceit?

Additionally, the Commission respectfully disagrees with the purpose of this measure as House Bill No. 51 incorrectly states that it is not permitted for licensed real estate brokers to have their commissions paid to a corporation or partnerships. Hawaii Administrative Rules § 16-99-3(k) specifically requires that “the brokerage firm shall not compensate a licensee of another brokerage firm in connection with a real estate transaction without paying directly or causing the payment to be made directly to the other brokerage firm.”

The Commission believes that its statutory purpose of protecting the public in its real estate transactions far outweigh any perceived benefits to corporations and partnerships in managing its associated business expenses. Passage of this measure

will undermine and contravene the longstanding legislative intent and consumer protection measures of Chapter 467, HRS.

For the reasons discussed in this testimony, the Commission opposes House Bill No. 51. Thank you for the opportunity to present testimony.