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

TO THE HOUSE COMMITTEE
ON
CONSUMER PROTECTION AND COMMERCE

TWENTY-NINTH STATE LEGISLATURE
REGULAR SESSION, 2017

FRIDAY, MARCH 17, 2017
2:00 P.M.

TESTIMONY ON SENATE BILL NO. 394 S.D.1
RELATING TO REAL ESTATE BROKERS

TO THE HONORABLE ROY M. TAKUMI, CHAIR,
AND TO THE HONORABLE LINDA ICHiyAMA, VICE CHAIR,
AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify on Senate Bill No. 394 S.D.1, Relating to Real Estate Brokers. My name is Daria Loy-Goto and I am the Complaints and Enforcement Officer for the Department's Regulated Industries Complaints Office ("RICO"). RICO offers testimony in support of Sections 3 and 4 of this bill.

Senate Bill No. 394 S.D.1 establishes criminal penalties relating to the deposit, segregation, or disposition of client trust accounts; requires a principal broker to provide the Real Estate Commission ("Commission") with the account

number and name of the financial institution where the client trust account is held, including any changes in this information within ten days; and authorizes the Commission to enforce client trust account requirements in circuit court. The bill also has a defective effective date of January 7, 2059.

Section 3 requires a principal broker to provide certain client trust account information to the Commission and Section 4 gives the Commission the authority to file a court action relating to client trust account violations. From an enforcement perspective, the information required in Section 3 will expedite RICO's investigations of alleged client trust account violations and Section 4 will allow RICO to pursue court action, in addition to existing administrative remedies, to address client trust account violations.

RICO defers to criminal law enforcement agencies on the issue of criminal penalties established in Section 2 of the bill.

RICO notes that this Committee heard the companion measure, House Bill No. 238, and passed out a House Draft 1 that deleted language establishing criminal penalties. Thereafter, the bill was not heard by the House Committee on Judiciary and did not cross over.

Thank you for the opportunity to testify on Senate Bill No. 394 S.D.1. I will be happy to answer any questions the Committee may have.

**PRESENTATION OF THE
REAL ESTATE COMMISSION**

TO THE HOUSE COMMITTEE ON
CONSUMER PROTECTION AND COMMERCE

TWENTY-NINTH LEGISLATURE
Regular Session of 2017

Friday, March 17, 2017
2:00 p.m.

**TESTIMONY ON SENATE BILL NO. 394, S.D. 1, RELATING TO REAL ESTATE
BROKERS.**

TO THE HONORABLE ROY M. TAKUMI, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Nikki Senter and I serve as the Chairperson of the Real Estate Commission ("Commission"). Thank you for the opportunity to present testimony on Senate Bill No. 394, S.D. 1, Relating to Real Estate Brokers. The Commission supports this measure.

Senate Bill No. 394, S.D. 1 creates the criminal offense of theft with regards to client trust accounts; requires principal brokers to file the account name and number with the Commission; and allows the filing of any action to enforce any violation regarding client trust accounts.

Under Section 467-4, Hawaii Revised Statutes, the Commission's statutory mandate is to protect "the general public in its real estate transactions." To this end, the Commission fully supports this measure.

Thank you for the opportunity to present testimony in support of Senate Bill No. 394, S.D. 1.

March 17, 2017

The Honorable Roy Takumi, Chair

House Committee on Consumer Protection & Commerce
State Capitol, Room 329
Honolulu, Hawaii 96813

RE: S.B. 394, S.D.1, Relating to Real Estate Brokers

HEARING: Friday, March 17, 2017, at 2:00 p.m.

Aloha Chair Takumi, Vice Chair Ichiyama and Members of the Committee,

I am Myoung Oh, Director of Government Affairs, here to testify on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its 9,200 members. HAR **opposes** S.B. 394, S.D.1 which:

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

HAR's opposition is specific to Section 2 and 4 because it is overly broad and ambiguous and unfairly singles out real estate licensees from other licensed professions. For example, under Section 4 of this bill, it provides that:

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

The sweeping language of Section 4, in particular, "filing of any action in circuit court determined to be necessary by the Commission to obtain an injunction or other order . . ." arguably grants the Real Estate Commission the ability to seek even criminal sanctions.

Criminal sanctions should be left with prosecutorial and law enforcement authorities and not to volunteer members of a commission.

To avoid the problematic nature of this section, the law should specifically focus upon granting the Real Estate Commission the power to obtain injunctive relief and thus protect consumer interests by imposing a swift halt to alleged wrongful behavior.

HAR respectfully recommends the following amendments to Section 4:

(3) Enforce this chapter and rules adopted pursuant thereto[;], including the filing of any action in circuit court determined to be necessary by the commission to obtain an injunctive order or judgment. —or other appropriate order or judgment for the enforcement of any law or rule under this chapter relating to client trust accounts;

HAR would also note that current criminal theft statutes adequately address the extremely rare instances that involve criminal behavior. **This measure proposes to single out real estate licensees from amongst the 26 other professional and vocational licenses in providing for criminal penalties. No other licensed provision is exposed to criminal prosecution from its own Board of Commissioners.**

Accordingly, **HAR respectfully suggests the deletion of Section 2.**

HAR would note that if the intent is to protect a client from the mishandling of funds by a real estate licensee, the filing of the client trust account number with the Real Estate Commission might be the cleanest first step in tracking such unlawful actions.

Finally, while property management fraud appears to be very rare, if there is any concern that the Legislature needs to act in 2017, it is more appropriate to commission a study to determine the nature and scope of the risks (if any) posed by errant real estate licensees prior to adopting the extreme step of criminalization.

Mahalo for the opportunity to testify on this measure.