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

TO THE SENATE COMMITTEE  
ON  
JUDICIARY AND LABOR

TWENTY-NINTH STATE LEGISLATURE  
REGULAR SESSION, 2017

MONDAY, FEBRUARY 27, 2017  
10:00 A.M.

**WRITTEN TESTIMONY ONLY**  
ON  
SENATE BILL NO. 394  
RELATING TO REAL ESTATE BROKERS

TO THE HONORABLE GILBERT S.C. KEITH-AGARAN, CHAIR,  
AND TO THE HONORABLE KARL RHOADS, VICE CHAIR,  
AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to submit written testimony on Senate Bill No. 394, 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 written testimony in support of Sections 3 and 4 of this bill.

Senate Bill No. 394 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.

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.

Thank you for the opportunity to submit written testimony on Senate Bill No. 394.

**PRESENTATION OF THE  
REAL ESTATE COMMISSION**

TO THE SENATE COMMITTEE ON  
JUDICIARY AND LABOR

TWENTY-NINTH LEGISLATURE  
Regular Session of 2017

Monday, February 27, 2017  
10:00 a.m.

**WRITTEN TESTIMONY**

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

TO THE HONORABLE GILBERT S.C. KEITH-AGARAN, 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 written testimony on Senate Bill No. 394, Relating to Real Estate Brokers. The Commission supports this measure.

Senate Bill No. 394 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 written testimony in support of Senate Bill No. 394.

February 27, 2017

**The Honorable Gilbert S.C. Keith-Agaran, Chair**  
Senate Committee on Judiciary  
State Capitol, Room 016  
Honolulu, Hawaii 96813

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

**HEARING: Monday, February 27, 2017, at 10:00 a.m.**

Aloha Chair Keith-Agaran, Vice Chair Rhoads and Members of the Committee,

I am Myoung Oh, Director of Government Affairs, submitting written comments 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 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 is opposed to Section 2 and 4 because it is overly broad and ambiguous. Moreover, it 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. To avoid the problematic nature of this section, the law should specifically focus upon granting



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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 would also note that current criminal theft statutes adequately address the extremely rare instances that involve criminal behavior. Additionally, **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 and the following amendment in Section 4 to avoid problems presented by the overly broad and/or ambiguous language:**

(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;~~

Furthermore, 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 would more than likely not help a consumer that is harmed from being made whole again financially.

Mahalo for the opportunity to submit written comments to this measure.

