

# SB395

Measure Title:	RELATING TO REAL ESTATE BROKERS.
Report Title:	Real Estate Brokers; Commissions; Corporations; Partnerships
Description:	Permits a licensed real estate broker to pay a commission to a corporation or partnership; provided that the licensed real estate broker earned the commission on behalf of the corporation or partnership and is a member, officer, shareholder, or partner of the corporation or partnership.
Companion:	<a href="#">HB51</a>
Package:	None
Current Referral:	CPH
Introducer(s):	BAKER, S. Chang, English, Espero, Nishihara

**PRESENTATION OF THE  
REAL ESTATE COMMISSION**

TO THE SENATE COMMITTEE ON  
COMMERCE, CONSUMER PROTECTION, AND HEALTH

TWENTY-NINTH LEGISLATURE  
Regular Session of 2017

Monday, February 27, 2017  
9:30 a.m.

**TESTIMONY ON SENATE BILL NO. 395, RELATING TO REAL ESTATE BROKERS.**

TO THE HONORABLE ROSALYN H. BAKER, 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 Senate Bill No. 395, Relating to Real Estate Brokers. Senate Bill No. 395 proposes to permit splitting fees or paying compensation to an unlicensed real estate corporation or partnership, provided the licensed real estate broker earned the commissions on behalf of the corporation or partnership and is a member, officer, shareholder, or partner of the 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. Each brokerage firm has one principal broker, and each principal broker may manage one brokerage firm. Section 467-1(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.

The Commission feels that this measure as written undermines the regulatory licensing structure and statutory responsibilities of licensed entities and individuals. State and federal laws are in place to ensure that proceeds from real estate transactions are handled in a manner that is transparent, accountable, and readily traceable. Senate Bill No. 395 would allow a licensee to earn a commission on behalf of an unlicensed entity instead of through a licensed brokerage firm with a licensed

principal broker. Real estate compensation could flow directly to entities over which the Commission has no oversight authority. Unlicensed entities may be domiciled in another state or country, and would not be subject to the same recordkeeping and other regulatory requirements as Hawaii licensees.

Also, the Commission respectfully disagrees with the purpose of this measure as Senate Bill No. 395 incorrectly states that it is not permitted for licensed real estate brokers to have their commissions paid to a corporation or partnerships. Hawaii law allows for such payments as long as they are made to a licensed brokerage firm. See, HAR §16-99-3(k).

The Commission believes that 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 the longstanding legislative intent and consumer protection measures of Chapter 467, HRS.

For the reasons described in this testimony, the Commission opposes Senate Bill No. 395. Thank you for the opportunity to present testimony.