



GOV. MSG. NO. 1277

EXECUTIVE CHAMBERS
KE KE'ENA O KE KIA'ĀINA

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA

July 2, 2024

The Honorable Ronald D. Kouchi
President of the Senate,
and Members of the Senate
Thirty-Second State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki
Speaker, and Members of the
House of Representatives
Thirty-Second State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

This is to inform you that on July 2, 2024, the following bill was signed into law:

SB2861 SD1 HD1 CD1

RELATING TO EXCLUSIVE LISTING
AGREEMENTS.
ACT 176

Sincerely,

Josh Green, M.D.
Governor, State of Hawai'i

on JUL 2 2024

THE SENATE
THIRTY-SECOND LEGISLATURE, 2024
STATE OF HAWAII

S.B. NO. 2861
S.D. 1
H.D. 1
C.D. 1

A BILL FOR AN ACT

RELATING TO EXCLUSIVE LISTING AGREEMENTS.

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

1 SECTION 1. This Act shall be known, and may be cited, as
2 the Exclusive Listing Agreements Act.

3 SECTION 2. The legislature finds that companies across the
4 United States have been targeting vulnerable property owners to
5 sign long-term exclusive listing agreements in exchange for a
6 nominal payment upfront and recording these agreements as liens
7 on the property. These complex contracts are essentially high-
8 interest loans that make selling, refinancing, or transferring
9 real estate difficult for property owners, and can deprive
10 property owners of the equity in their property. Many property
11 owners who sign exclusive listing agreements may not be fully
12 aware of the impact of these agreements on their property rights
13 and the rights of future owners of the property, including
14 family members who inherit the property. Investigations and
15 lawsuits from other states assert that companies are deceptively
16 advertising their agreements' terms and failing to fully
17 disclose the terms to property owners.



1 The legislature further finds that there is a growing trend
2 among state legislatures to ban exclusive listing agreements.
3 Since 2021, consumer protection advocates and real estate and
4 title industry representatives have worked to ban predatory
5 exclusive listing agreements in fifteen states. The legislature
6 recognizes that long-term exclusive listing agreements, and the
7 recording of exclusive listing agreements as liens, could have a
8 devastating impact on Hawaii's property owners by unfairly
9 encumbering a property owner's title, reducing the property
10 owner's equity, and having an anti-competitive effect on the
11 sale of real property in Hawaii. Property owners who are
12 subject to unfair and deceptive business practices involving
13 exclusive listing agreements should be provided appropriate and
14 reasonable remedies such as obtaining a court order declaring
15 the agreement to be void and unenforceable and recovering
16 damages.

17 Accordingly, the purpose of this Act is to prevent unfair
18 exclusive listing agreements from becoming prevalent in the
19 State by:

20 (1) Making certain long-term exclusive listing agreements
21 for the sale of residential real property void and



1 unenforceable under the state law that governs unfair
2 and deceptive practices;

3 (2) Prohibiting the recording or filing of exclusive
4 listing agreements of any duration with the bureau of
5 conveyances; and

6 (3) Establishing certain remedies for persons who are
7 subject to unfair exclusive listing agreements.

8 SECTION 3. Chapter 481B, Hawaii Revised Statutes, is
9 amended by adding a new section to part I to be appropriately
10 designated and to read as follows:

11 "§481B- Exclusive listing agreements; prohibited. (a)
12 An exclusive listing agreement shall be void and unenforceable
13 under this chapter if the agreement:

14 (1) Lasts longer than twelve months from the date the
15 agreement was made;

16 (2) Purports to run with the land or be binding on future
17 owners of interests in the real property;

18 (3) Allows for assignment of the right to provide services
19 without notice to and the consent of the owner of the
20 residential real property; or



1 (4) Purports to create a lien, encumbrance, or other real
2 property security interest.

3 (b) It shall be unlawful to present for recording or
4 filing, or otherwise attempt to record to file, with the bureau
5 of conveyances an exclusive listing agreement of any duration or
6 any memoranda or notice of an exclusive listing agreement.

7 (c) It shall be unlawful to enforce, or attempt to
8 enforce, an exclusive listing agreement that is made, or that is
9 presented for recording or filing with the bureau of
10 conveyances, in violation of this section.

11 (d) An exclusive listing agreement that is made or
12 presented for recording or filing with the bureau of conveyances
13 in violation of this section shall not be enforceable, have any
14 legal effect, or provide actual or constructive notice to any
15 person interested in the residential real property that is
16 identified in the exclusive listing agreement.

17 (e) An exclusive listing agreement that is made or is
18 presented for recording or filing with the bureau of conveyances
19 in violation of this section shall not operate as a lien,
20 encumbrance, or security interest.



1 (f) No owner or buyer shall be required to record any
2 document to remove an exclusive listing agreement that is made
3 or is presented for recording or filing with the bureau of
4 conveyances in violation of this section.

5 (g) If an exclusive listing agreement, memorandum of the
6 agreement, or notice is recorded in violation of this section,
7 then a person with an interest in the real property that is
8 subject to the agreement may apply to a court of competent
9 jurisdiction in the county where the real property is located to
10 record a court order declaring the agreement, memorandum of
11 agreement, or notice void and unenforceable.

12 (h) A violation of this section shall be deemed an unfair
13 or deceptive practice in accordance with section 480-2, and
14 shall be subject to the provisions of chapter 480, as well as
15 the provisions of this chapter.

16 (i) In addition to any other rights provided by law, any
17 person with an interest in real property identified by a
18 recording that is void and unenforceable under subsection (a)
19 may recover damages, costs, and attorney's fees that may be
20 proved against the service provider named in the void exclusive
21 listing agreement. Any actual damages, costs, and attorney's



1 fees that are proved against the service provider shall not be
2 offset by the consideration paid by the service provider to the
3 owner of the real property.

4 (j) A service provider has no right to a refund of the
5 consideration paid to the owner in connection with a void
6 exclusive listing agreement.

7 (k) For the purposes of this section:

8 "Exclusive listing agreement" means a contract or agreement
9 providing an exclusive right to list or sell residential real
10 property, including a contract or agreement to enter into an
11 agreement or arrangement.

12 "Residential real property" means real property located in
13 the State that is used primarily for personal, family, or
14 household purposes and consists of one to four dwelling units.

15 "Service provider" means a legal person, including an
16 entity or organization, who provides a service related to real
17 property, including a real estate broker or real estate
18 salesperson. For purposes of this definition, "real estate
19 broker" and "real estate salesperson" have the same meaning as
20 defined in section 467-1."

21 SECTION 4. New statutory material is underscored.



1 SECTION 5. This Act shall take effect on November 1, 2024.



S.B. NO. 2861
S.D. 1
H.D. 1
C.D. 1

APPROVED this **2nd** day of **July**, 2024





GOVERNOR OF THE STATE OF HAWAII

THE SENATE OF THE STATE OF HAWAI'I

Date: May 1, 2024
Honolulu, Hawai'i 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the Senate of the Thirty-Second Legislature of the State of Hawai'i, Regular Session of 2024.


President of the Senate


Clerk of the Senate

SB No. 2861, SD 1, HD 1, CD 1

THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: May 1, 2024
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Thirty-Second Legislature of the State of Hawaii, Regular Session of 2024.



Scott K. Saiki
Speaker
House of Representatives



Brian L. Takeshita
Chief Clerk
House of Representatives