

Honolulu, Hawaii

**FEB 29 2024**RE: S.B. No. 2861  
S.D. 1

Honorable Ronald D. Kouchi  
President of the Senate  
Thirty-Second State Legislature  
Regular Session of 2024  
State of Hawaii

Sir:

Your Committee on Commerce and Consumer Protection, to which was referred S.B. No. 2861 entitled:

"A BILL FOR AN ACT RELATING TO EXCLUSIVE LISTING AGREEMENTS,"

begs leave to report as follows:

The purpose and intent of this measure is to:

- (1) Make it unlawful for an exclusive listing agreement to last longer than twelve months from the date the agreement was made; and
- (2) Make it unlawful to present for recording or filing, or to otherwise attempt to record or file, with the Bureau of Conveyances, an exclusive listing agreement of any duration.

Your Committee received testimony in support of this measure from the Office of Consumer Protection of the Department of Commerce and Consumer Affairs, Hawai'i Association of REALTORS, and AARP Hawai'i.

Your Committee received comments on this measure from the Department of Land and Natural Resources.

Your Committee finds that an exclusive listing is a type of real estate listing agreement in which a property seller appoints



and specifically authorizes one real estate broker to act as the seller's sole agent. By contrast, in an open, or non-exclusive listing, the seller has the right to employ any number of brokers as agents. Your Committee also finds that it is common for more established, successful real estate agents and agencies to require these exclusive listing agreements, ensuring that the agent or their agency receives commissions throughout the duration of the agreement every time the home changes hands, no matter who actually finds the buyer. Your Committee further finds that the exclusive listing agreements are recorded as liens on the property, placing a cloud on the property's title and hampering the homeowner's ability to borrow money through a mortgage or home equity loan. Furthermore, because the agreement attaches to the property and not the person who entered into the exclusive listing agreement, subsequent owners of the property are also subject to the terms and conditions of the agreement. Your Committee finds that many consumers are unaware of the consequences of entering into exclusive listing agreements, as advertisements and explanations of this practice are deceptive and fail to fully explain the terms. Therefore, this measure will curb the uncompetitive practice of long-term exclusive listing agreements that can unfairly encumber a property owner's title, reduce their equity, and have an anti-competitive effect on the sale of real estate, thereby promoting the free choice of agents for property sellers.

Prior to the decision-making hearing on this measure, your Committee circulated and made available to its members consensus language prepared by the Office of Consumer Protection and the Bureau of Conveyances to clarify that recorded exclusive listing agreements shall not operate as a lien and establishing certain remedies. Amendments to this measure are therefore necessary to incorporate this consensus language.

Accordingly, your Committee has amended this measure by:

- (1) Inserting language to clarify that an exclusive listing agreement is void and unenforceable under state law that governs unfair and deceptive practices if the agreement:
  - (A) Lasts longer than twelve months from the date the agreement was made;



- (B) Purports to run with the land or be binding on future owners of interests in the residential real property;
  - (C) Allows for assignment of the right to provide services without notice to and the consent of the owner of the residential real property; or
  - (D) Purports to create a lien, encumbrance, or other real property security interest;
- (2) Inserting language clarifying that an exclusive listing agreement made or presented for recording or filing with the Bureau of Conveyances in violation of the requirements proposed in this measure:
- (A) Shall not be enforceable, have any legal effect, or provide actual or constructive notice to any person interested in the residential real property identified in the exclusive listing agreement; and
  - (B) Shall not operate as a lien, encumbrance, or security interest;
- (3) Inserting language:
- (A) Relieving owners or buyers of residential real property subject to an exclusive listing agreement made or presented for recording or filing with the Bureau of Conveyances in violation of the requirements proposed in this measure from the burden of recording documents to remove the agreement from the property's records;
  - (B) Allowing a person with an interest in the residential real property subject to an exclusive listing agreement, notice, or memorandum of agreement recorded in violation of the requirements proposed in this measure to apply for a court order declaring the agreement, notice, or memorandum of agreement void and unenforceable; and



- (C) Allowing a person with an interest in the residential real property subject to a void and unenforceable exclusive listing agreement to recover damages, costs, and attorney's fees that may be proved against the service provider named in the agreement;
- (4) Inserting language providing that a service provider has no right to a refund of the consideration paid to the owner of residential real property in connection with a void exclusive listing agreement;
- (5) Amending the definition of "exclusive listing agreement" to apply only to "residential real property";
- (6) Inserting definitions of "residential real property" and "service provider" for the purposes of clarity;
- (7) Deleting language that would have established certain prohibitions in chapter 502, Hawaii Revised Statutes;
- (8) Amending section 1 to reflect its amended purpose;
- (9) Inserting an effective date of July 1, 2040, to encourage further discussion; and
- (10) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Commerce and Consumer Protection that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2861, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2861, S.D. 1, and be placed on the calendar for Third Reading.



Respectfully submitted on  
behalf of the members of the  
Committee on Commerce and  
Consumer Protection,



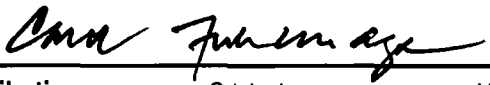
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JARRETT KEOHOKALOLE, Chair



The Senate  
 Thirty-Second Legislature  
 State of Hawai'i

**Record of Votes**  
**Committee on Commerce and Consumer Protection**  
**CPN**

Bill / Resolution No.:*	Committee Referral:	Date:
<b>SB 2861</b>	<b>CPN</b>	<b>2/23/24</b>
<input type="checkbox"/> The Committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____		
The Recommendation is:		
<input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313		
Members	Aye	Aye (WR)
Nay	Excused	
KEOHOKALOLE, Jarrett (C)	✓	
FUKUNAGA, Carol (VC)	✓	
MCKELVEY, Angus L.K.		✓
RICHARDS, III, Herbert M. "Tim"	✓	
AWA, Brenton	✓	
<b>TOTAL</b>	<b>4</b>	<b>1</b>
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted		
Chair's or Designee's Signature: 		
Distribution:             Original             Yellow             Pink             Goldenrod File with Committee Report             Clerk's Office             Drafting Agency             Committee File Copy		

\*Only one measure per Record of Votes