

ACT 187

H. B. 777.

A Bill for an Act Relating to Real Estate Brokers and Salesmen and Amending Chapter 170.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 170 of the Revised Laws of Hawaii 1955 is amended by adding new sections to be appropriately numbered and to read as follows:

“Section 170-15. Real estate recovery fund; use of fund; fees. The real estate commission is authorized and directed to establish and maintain a real estate recovery fund from which any person aggrieved by an act, representation, transaction, or conduct of a duly licensed real estate broker, or real estate salesmen, which is in violation of the provisions of this chapter or the regulations promulgated pursuant thereto, may recover by order of the circuit court or district court of the county where the violation occurred, an amount of not more than ten thousand dollars for damages sustained by the act, representation, transaction or conduct.

Every real estate broker, when renewing his license in 1968 and 1969, shall pay in addition to his license renewal fee, a fee of twenty-five dollars for deposit in the real estate recovery fund. Every real estate salesman, when renewing his license in 1968 and 1969, shall pay, in addition to his license renewal fee, a fee of fifteen dollars for deposit in the real estate recovery fund. On or after January 1, 1968, when any person makes application for an original license to practice as a real estate broker or salesman he shall pay, in addition to his original license fee, a fee of twenty-five dollars for deposit in the real estate recovery fund. In the event that the real estate commission does not issue the license, this fee shall be returned to the applicant.

“Section 170-16. Additional payments to fund. If, on December 31 of any year, the balance remaining in the real estate recovery fund is less than one hundred and fifty thousand dollars, every real estate broker, when renewing his license during the following calendar year, shall pay, in addition to his license renewal fee, a fee of twenty-five dollars for deposit in the real estate recovery fund, and every real estate salesman, when renewing his license during such year, shall pay, in addition to his license renewal fee, a fee of fifteen dollars for deposit in the real estate recovery fund.

“Section 170-17. Statute of limitation; recovery from fund.

(a) No action for a judgment which subsequently results in an order for collection from the real estate recovery fund shall be started later than two years from the accrual of the cause of action thereon. When any aggrieved person commences action for a judgment which may result in collection from the real estate recovery fund, the aggrieved person shall notify the real estate board* in writing to this effect at the time of the commencement of such action. The real estate board* shall have the right to intervene in and defend any such action.

(b) When any aggrieved person recovers a valid judgment in any court of competent jurisdiction against any real estate broker, real estate salesman, upon the grounds of fraud, misrepresentation or deceit, which occurred on or after January 1, 1968, the aggrieved person may, upon the termination of all proceedings, including reviews and appeals in connection with the judgment, file a verified claim in the court in which the judgment was entered and, upon ten days written notice to the real estate commission, may apply to the court for an order directing payment out of the real estate recovery fund, of the amount unpaid upon the judgment, subject to the limitations stated in this section.

(c) The court shall proceed upon such application in a summary manner, and, upon the hearing thereof, the aggrieved person shall be required to show:

(1) He is not a spouse of debtor, or the personal representative of such spouse.

(2) He has complied with all the requirements of this section.

(3) He has obtained a judgment as set out in subsection (b) of this section, stating the amount thereof and the amount owing thereon at the date of the application.

(4) He has made all reasonable searches and inquiries to ascertain whether the judgment debtor is possessed of real or personal property or other assets, liable to be sold or applied in satisfaction of the judgment.

(5) That by such search he has discovered no personal or real property or other assets liable to be sold or applied, or that he has discovered certain of them, describing them, owned by the judgment debtor and liable to be so applied, and that he has taken all necessary action and proceedings for the realization thereof, and that the amount thereby realized was insufficient to satisfy the judgment, stating the amount so realized and the balance remaining due on the judgment after application of the amount realized.

(d) The court shall make an order directed to the real estate commission requiring payment from the real estate recovery fund of whatever sum it shall find to be payable upon the claim, pursuant to the provisions of and in accordance with the limitations contained in this section, if the court is satisfied, upon the hearing, of the truth of all matters required to be shown by the aggrieved person by subsection (c) of this section and that the ag-

* Should properly read “commission.”

grieved person has fully pursued and exhausted all remedies available to him for recovering the amount awarded by the judgment of the court.

(e) Should the real estate commission pay from the real estate recovery fund any amount in settlement of a claim or toward satisfaction of a judgment against a licensed real estate broker or real estate salesman, the license of the broker or salesman shall be automatically terminated upon the issuance of a court order authorizing payment from the real estate recovery fund. No such broker or salesman shall be eligible to receive a new license until he has repaid in full, plus interest at the rate of six per cent a year, the amount paid from the real estate recovery fund on his account. A discharge in bankruptcy shall not relieve a person from the penalties and disabilities provided in this paragraph.

(f) If, at any time, the money deposited in the real estate recovery fund is insufficient to satisfy any duly authorized claim or portion thereof, the real estate commission, shall, when sufficient money has been deposited in the real estate recovery fund, satisfy such unpaid claims or portions thereof, in the order that such claims or portions thereof were originally filed, plus accumulated interest at the rate of six per cent a year.

“Section 170-18. Management of fund. The sums received by the real estate commission for deposit in the real estate recovery fund shall be held by the real estate commission in trust for carrying out the purposes of the real estate recovery fund. These funds may be invested and reinvested in the same manner as funds of the state employees’ retirement system, and the interest from these investments shall be deposited to the credit of the real estate education fund, and which shall be available to the real estate commission for educational purposes, which is hereby created.

“Section 170-19. False statement. It shall be unlawful for any person or his agent to file with the real estate commission any notice, statement, or other document required under the provisions of this chapter, which is false or untrue or contains any material misstatement of fact and shall constitute a misdemeanor.

“Section 170-20. The real estate commission shall have standing in court. When the real estate commission receives notice, as provided in section 170-17, subsection (a), the real estate commission may enter an appearance, file an answer, appear at the court hearing, defend the action or take whatever other action it may deem appropriate on the behalf and in the name of the defendant, and take recourse through any appropriate method of review on behalf of, and in the name of, the defendant.

“Section 170-21. Subrogation of rights. When, upon the order of the court, the real estate commission has paid from the real estate recovery fund any sum to the judgment creditor, the real estate commission shall be subrogated to all of the rights of the judgment creditor and the judgment creditor shall assign all his right, title and interest in the judgment to the real estate commission and any amount and interest so recovered by the real estate commission on the judgment shall be deposited to the fund.

“Section 170-22. Waiver of rights. The failure of an aggrieved per-

son to comply with all of the provisions of this chapter relating to the real estate recovery fund shall constitute a waiver of any rights hereunder.

“Section 170-23. Maximum liability. Notwithstanding any other provision, the liability of that portion of the real estate recovery fund allocated for the purposes of the real estate recovery fund shall not exceed twenty thousand dollars (\$20,000) for any one licensee.

“Section 170-24. Disciplinary action against licensee. Nothing contained herein shall limit the authority of the commission to take disciplinary action against any licensee for a violation of any of the provisions of chapter 170, or of the rules and regulations of the commission; nor shall the repayment in full of all obligations to the real estate recovery fund by any licensee nullify or modify the effect of any other disciplinary proceeding brought pursuant to the provisions of chapter 170.”

SECTION 2. Section 170-7.5 shall be void after December 31, 1967.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 2, 1967.)