

ACT 51

S. B. NO. 1060

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

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

SECTION 1. Chapter 467, Hawaii Revised Statutes, is amended in the following particulars:

a. By amending Section 467-16 to read:

“Sec. 467-16 Real estate recovery fund; use of fund; fees. The real estate commission shall 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 salesman, upon the grounds of fraud, misrepresentation or deceit, may recover by order of the circuit court or district court of the county where the violation occurred, an amount of not more than \$10,000 for damages sustained by the fraud, misrepresentation, or deceit.

Every real estate broker, when renewing his license in 1968 and 1969, shall pay in addition to his license renewal fee, a fee of \$25 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 \$15 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 \$25 for deposit in the real estate recovery fund. If the commission does not issue the license, the fee shall be returned to the applicant."

b. By amending Section 467-18 to read:

"Sec. 467-18 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 commission in writing to this effect at the time of the commencement of such action. The commission may intervene in and defend any such action.

(b) When any aggrieved person recovers a valid judgment in any circuit or district court where the violation occurred against any real estate broker, or 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 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. For any cause of action occurring prior to January 1, 1968, the aggrieved person must proceed against the existing bond covering the license which was in force prior to the establishment of the real estate recovery fund.

(c) The court shall proceed upon the 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 commission requiring payment from the real estate recovery fund of whatever sum it finds to be payable upon the claim, pursuant to 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 aggrieved 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 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 percent 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 subsection.

(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 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 percent a year.”

c. By amending Section 467-21 to read:

“Sec. 467-21 The real estate commission has standing in court. When the real estate commission receives notice, as provided in Section 467-18(a), the commission may enter an appearance, file an answer, appear at the court hearing, defend the action, or take whatever other action it deems appropriate on 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. The commission or its legal representative shall be served with all pleadings in an action which may result in a recovery from the real estate recovery fund.

Settlement of any claim against the real estate recovery fund may be made only with the unanimous agreement of the commission, director of regulatory agencies, and attorney general that settlement is in the best interest of the real estate recovery fund.”

SECTION 2. Material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

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

(Approved May 16, 1972.)

*Edited accordingly.