

## ACT 145

S.B. NO. 2798

A Bill for an Act Relating to Real Estate.

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

SECTION 1. Section 467-1, Hawaii Revised Statutes, is amended to read as follows:

**“§467-1 Definitions.** As used in this chapter:

“Commission” means the real estate commission of the State.

“Custodian or caretaker” means any person, who for compensation or valuable consideration, is employed either directly or indirectly by a single owner and has the responsibility to manage or care for that real property left in the person’s trust; provided that the term “custodian” or “caretaker” shall not include any person who leases or offers to lease, or rents or offers to rent, any real estate for more than a single owner; provided further that a single owner shall not include an association of owners of a condominium, cooperative or planned unit development.

“Hotel” includes a structure of structures used primarily for the business of providing transient lodging for periods of less than thirty days and which furnishes customary hotel services including, but not limited to, front desk, restaurant, daily maid and linen service, bell service, or telephone switchboard; provided that for the purposes of this chapter, apartments in a project as defined by section 514A-3 that provide customary hotel services shall be excluded from the definition of hotel. The definition of hotel as set forth in this section shall be in addition to and supplement the definition of “hotel” as set forth in the various county ordinances.

“Real estate” means and includes lands, the improvements thereon, leaseholds, and all other interests in real property. It shall be immaterial that a transaction also involves property other than real estate, as for example a transaction for the sale of an ongoing business, an asset of which consists of a leasehold or other interest in real property. In such a case, to the extent that real estate is involved, it shall be considered a real estate transaction for the purpose of this definition.

“Real estate broker” means and includes any person, copartnership, or corporation, who for compensation or a valuable consideration, sells or offers to sell, buys or offers to buy, or negotiates the purchase or sale or exchange of real estate, or lists, or solicits for prospective purchasers, or who leases or offers to lease, or rents or offers to rent, any real estate, or the improvements thereon, for others, as a whole or partial vocation; or who secures, receives, takes, or accepts, and sells or offers to sell, any option on real estate without the exercise by the person, copartnership, or corporation of the option and for the purpose or as a means of evading the licensing requirement of this chapter.

“Real estate salesman” means any person who, for a compensation or valuable consideration, is employed either directly or indirectly by a real estate broker, or is an independent contractor in association with a real estate broker, to sell or offer to sell, buy or offer to buy, or list, or solicit for prospective purchasers, or who leases or offers to lease, or rents or offers to rent any real estate, or the improvements thereon, for others as a whole or partial vocation; or who secures, receives, takes, or accepts, and sells or offers to sell, any option on real estate without the exercise by the person of such option and for the purpose or as a means of evading the licensing requirements of this chapter. Every real estate salesman must be under the direction of a broker for all real estate transactions. All references in this chapter to “real estate salesman” includes “real estate salesperson”.

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SECTION 2. Section 467-11, Hawaii Revised Statutes, is amended to read as follows:

**“§467-11 Fees; original license and biennial renewals.** (a) [The fee] All fees for any license prescribed by this chapter and all fees allocated to the real estate education fund shall be [as follows:

- (1) To act as a real estate broker, \$50, \$20 of which shall be deposited in the real estate education fund;
- (2) To act as a real estate salesperson, \$50, \$20 of which shall be deposited in the real estate education fund;
- (3) Biennial renewal for broker, \$100, \$20 of which shall be deposited in the real estate education fund;
- (4) Biennial renewal for salesperson, \$50, \$20 of which shall be deposited in the real estate education fund;
- (5) To obtain a branch office license, \$50;
- (6) To reinstate a suspended license, \$25;
- (7) Biennial renewal of inactive broker license, \$100, \$20 of which shall be deposited in the real estate education fund;
- (8) Biennial renewal of inactive salesperson license, \$50, \$20 of which shall be deposited in the real estate education fund.

(b) A fee of \$10 shall be charged for the reissuance of a lost license, or for the reissuance of license when there has been a change in the licensee's name or for the reissuance of license where there has been a change in the business address, or, in the case of a salesperson, when the salesperson is either employed by or associated with a different broker.] as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91.

[(c)] (b) The biennial renewal fee shall be paid to the [real estate commission] department of commerce and consumer affairs on or before December 31 of each even-numbered year. Failure, neglect, or refusal of any duly licensed real estate broker or real estate salesperson to pay the biennial renewal fee shall constitute a forfeiture of the license of the broker or salesperson. The license of the broker or salesperson may be restored upon written application therefor, [the] payment [to the commission] of the delinquent [fee] fees and [a] the penalty [fee of \$10,] fees as provided in the rules adopted by the director of commerce and consumer affairs pursuant to chapter 91, and satisfaction of such other requirements as the commission may impose as a condition to restoration.

[(d)] (c) A broker or salesperson may place the broker's or salesperson's license on an inactive status upon payment of the proper fee, and such license may be renewed biennially on or before December 31 of each even-numbered year.

[(e)] (d) All fees and other moneys collected or received under this chapter shall be deposited by the director of commerce and consumer affairs with the director of finance to the credit of the general fund.

[(f)] (e) The commission may refund any fee erroneously paid to it under this section when the commission deems it just and equitable.

[(g)] (f) If beginning on July 1, 1987, the education fund balance at the end of any fiscal biennium exceeds \$1,200,000, there shall be a moratorium on such renewal contributions and the commission shall review and consider a reduction in the same amount in licensee fees.”

SECTION 3. Section 467-16, Hawaii Revised Statutes, is amended to read as follows:

**“§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] salesperson, upon the grounds of fraud, misrepresentation, or deceit, may recover upon the commission's settlement of a claim or by order of the circuit court or district court of the county where the violation occurred, an amount of not more than \$25,000 per transaction for damages sustained by the fraud, misrepresentation, or deceit, including court costs and fees as set by law, and reasonable attorney fees as determined by the court.

When any person makes application for an original license to practice as a real estate broker or [salesman] salesperson the person shall pay, in addition to the person's original license fee, a recovery fund fee [of \$50] as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91 for deposit in the real estate recovery fund. If the commission does not issue the license, this fee shall be returned to the applicant."

SECTION 4. Section 467-17, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

**"§467-17 Additional payments to fund.** (a) If the balance remaining in the real estate recovery fund is less than \$350,000, the department of commerce and consumer affairs shall assess every real estate licensee [a license fee of \$25] an additional payment to the recovery fund as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91 for deposit in the real estate recovery fund."

SECTION 5. Section 467-25.5, Hawaii Revised Statutes, is amended by amending subsections (c), (d), and (e) to read as follows:

"(c) The fees for [each original] a certificate of registration and renewal thereof for schools and instructors [prescribed by this section] shall be [as follows:

- (1) Schools, for real estate broker and real estate salesman certificate of registration, \$750;
- (2) Schools, for real estate broker or real estate salesman certificate of registration, \$500;
- (3) For each additional real estate broker or real estate salesman's school, \$250;
- (4) Schools, annual renewals; for each original applicant or initial licensee, \$150; for each additional course, \$100 plus \$1 for each certificate of completion to each student;
- (5) Instructors, certificate of registration, \$25;
- (6) Instructors, renewal of certificate of registration, \$25;
- (7) Specialized instructors, initial certificate of registration and renewal fee, \$25.] as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91.

(d) Examination fee for instructors requesting to be certificated if and when required [as prescribed by rules and regulations under this chapter shall be \$20.] shall be as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91.

(e) In the event a certificate of registration [lapses.] is forfeited, the certificate of registration may be reinstated upon payment of the renewal fee [plus amount of renewal fee.] that is immediately due and owing, past due renewal fees, and penalty fees as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91."

SECTION 6. Section 467-30, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

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“(b) Any sole proprietor, partnership, corporation, or other business entity who, in the operation of a condominium hotel engages in any activity set forth in the definitions of “real estate”, “real estate broker”, and “real estate [salesman] salesperson” in section 467-1 and who also is not a custodian or caretaker shall:

- (1) Obtain a license as a real estate broker in compliance with this chapter and the rules of the commission[, and];
- (2) Register with the real estate commission as a condominium operator and provide evidence of bonding to the real estate commission in an amount equal to \$500 multiplied by the aggregate number of units covered by all of the condominium hotel contracts; except that the minimum of the bond required by this paragraph shall not be less than \$20,000 nor greater than \$100,000. The bond shall protect the owners of the apartment whose apartments are used to provide customary hotel service<sup>1</sup>]; and
- (3) Pay the department of commerce and consumer affairs a registration fee as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91.”

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 8. This Act shall take effect upon its approval.

(Approved June 1, 1988.)

### Note

1. So in original.