

ACT 168

S.B. NO. 417

A Bill for an Act Relating to Residential Leaseholds.

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

SECTION 1. Section 467-14, Hawaii Revised Statutes, is amended to read as follows:

“§467-14 Revocation and suspension of licenses. The real estate commission may revoke any license issued under this chapter, or suspend the right of the licensee to use the license, for any of the following causes:

- (1) Making any misrepresentation concerning any real estate transaction;
- (2) Making any false promises concerning any real estate transaction of a character likely to mislead another;
- (3) Pursuing a continued and flagrant course of misrepresentation, or making of false promises through advertising or otherwise;
- (4) Without first having obtained the written consent [so] to do so of both parties involved in any real estate transaction, acting for both the parties in connection with the transaction, or collecting or attempting to collect commissions or other compensation [for] the licensee's services from both of such parties;
- (5) When the licensee, being a real estate salesperson, accepts any commission or other compensation for the performance of any of the acts enumerated in the definition set forth in section 467-1 of real estate salesperson from any person, copartnership, or corporation other than the salesperson's employer or the broker with whom the salesperson associates or, being a real estate broker or salesperson, compensates one not licensed under this chapter to perform any such act;
- (6) When the licensee, being a real estate salesperson, acts or attempts to act as a real estate broker or represents, or attempts to represent, any real estate broker other than the salesperson's employer or the broker with whom the salesperson is associated;
- (7) Failing, within a reasonable time, to account for any moneys belonging to others which may be in the possession or under the control of the licensee;
- (8) Any other conduct constituting fraudulent or dishonest dealings;
- (9) When the licensee, being a copartnership, permits any member of the copartnership who does not hold a real estate broker's license to actively participate in the real estate brokerage business thereof or permits any employee thereof who does not hold a real estate salesperson's license to act as a real estate salesperson therefor;
- (10) When the licensee, being a corporation, permits any officer or employee of the corporation who does not hold a real estate broker's license to have the direct management of the real estate brokerage

business thereof or permits any officer or employee thereof who does not hold a real estate salesperson's license to act as a real estate salesperson therefor;

- (11) When the licensee, being a real estate salesperson, fails to file with the commission a written statement setting forth the name of the real estate broker by whom the licensee is employed or with whom the licensee is associated;
- (12) When the licensee fails to obtain on the contract between the parties to the real estate transaction confirmation of who the broker represents;
- (13) Violating this chapter, chapter 484, 514A, 514E, [or] 515[,]; section 516- or ; or the rules adopted pursuant thereto;
- (14) Splitting fees with or otherwise compensating others not licensed hereunder for referring business; provided that notwithstanding paragraph (5), a licensed broker may pay a commission to:
 - (A) A licensed broker of another state, territory, or possession of the United States if such broker does not conduct in this State any of the negotiations for which a commission is paid;
 - (B) A broker lawfully engaged in brokerage activity under the laws of a foreign country if such broker does not conduct in this State any of the negotiations for which a commission is paid; or
 - (C) A travel agency that in the course of business as a travel agency or sales representative, arranges for compensation the rental of transient vacation rental; provided that for purposes of this paragraph "travel agency" means any sole proprietorship, organization, trust, group, association, partnership, corporation, society, or combination of such, which for compensation or other consideration, acts or attempts to act as an intermediary between a person seeking to purchase travel services and any person seeking to sell travel services, including an air or ocean carrier;
- (15) Commingling the money or other property of the licensee's principal with the licensee's own;
- (16) Converting other people's moneys to the licensee's own use;
- (17) The licensee is adjudicated insane or incompetent; and
- (18) Failing to ascertain and disclose all material facts concerning every property for which the licensee accepts the agency, so that the licensee may fulfill the licensee's obligation to avoid error, misrepresentation, or concealment of material facts; provided that for the purposes of this paragraph, the fact that an occupant has AIDS, AIDS Related Complex (ARC) or has been tested for HIV (human immunodeficiency) infection shall not be considered a material fact.

Disciplinary action may be taken by the commission whether the licensee is acting as a real estate broker, or salesperson, or on the licensee's own behalf.

No licensee shall be suspended for longer than two years and no person whose license has been revoked shall be eligible to apply for a new license until the expiration of two years."

SECTION 2. Section 514A-61, Hawaii Revised Statutes, is amended to read as follows:

"§514A-61 Disclosure requirements. (a) Each developer of a project subject to this chapter shall prepare and provide to each prospective initial purchaser an abstract which shall contain the following:

- (1) The name and address of the project, and the name, address, and telephone number of the developer or the developer's agent and of the project manager or the project manager's agent;
 - (2) A breakdown of the annual maintenance fees and the monthly estimated cost for each apartment, revised and updated at least every twelve months and certified to have been based on generally accepted accounting principles;
 - (3) A description of all warranties for the individual apartments and the common elements, including the date of initiation and expiration of any such warranties; and if no warranties exist, the developer shall state that no warranties exist;
 - (4) A statement of the proposed number of apartments to be used for residential or hotel use in a mixed use project containing apartments for both residential and hotel use;
 - (5) A statement of the extent of commercial or other non-residential development in the project.
- (b) In the case of a project which includes one or more existing structures being converted to condominium status:
- (1) A statement by the declarant, based upon a report prepared by an independent registered architect or engineer, describing the present condition of all structural components and mechanical and electrical installations material to the use and enjoyment of the condominium;
 - (2) A statement by the declarant of the expected useful life of each item reported on in paragraph (1) or a statement that no representations are made in that regard;
 - (3) A list of any outstanding notices of uncured violations of building code or other municipal regulations, together with the cost of curing these violations;
 - (4) A statement whether the project is on a lot, or has structures, or uses which do not conform to present zoning requirements;
- provided that paragraphs (1), (2), and (3) apply only to apartments that may be occupied for residential use, and only to apartments that have been in existence for five years.

(c) In the sale of residential leasehold properties, the disclosure requirements set forth in _____ shall be complied with.

[(c)] (d) This section shall be administered by the real estate commission. The real estate commission may waive the requirements of subsections (a) and (b) if the information required to be contained in the disclosure abstract is included in the real estate commission's public report on the project."

SECTION 3. Part III of Chapter 516, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§516- Residential lease; disclosure. (a) Notwithstanding any provision to the contrary, for any sale of residential leasehold property, the deposit, receipt, offer, and acceptance contract (DROA) or other similar contract must state that no later than ten calendar days from acceptance, the seller shall directly or through the seller's agent provide to the buyer, a copy of the original recorded lease and any amendments thereto for the buyer's approval and acceptance. Upon receipt of the original lease and amendments thereto, the buyer shall have five calendar days to review, accept or reject the terms of the lease.

(b) In addition to the requirements set forth in subsection (a), the buyer shall acknowledge receipt of the lease documents specified under subsection (a) through a signed receipt or a signed DROA or other contract. The receipt or contract shall include at least the following information:

- (1) A standardized summary of major provisions of the lease in plain language, such as the length of the lease, lease rent terms, lease rent renegotiation dates, how renegotiated lease rents will be calculated; and surrender clause provisions;
 - (2) A standardized glossary of commonly used lease terms in plain language; and
 - (3) A statement that the buyer has read and understands the provisions of the lease document.
- (c) Within five calendar days of acknowledged receipt of the contract specified in subsection (a), the buyer shall have the right to cancel the offer to purchase with no loss of deposit.
- (d) The seller and buyer may, on a standardized form, agree to reduce or extend the time period provided herein for production and review of the applicable lease documents; provided that the agreement shall not constitute a waiver of the requirement to provide the applicable lease documents to the buyer.”

SECTION 4. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

“CHAPTER RESIDENTIAL LEASEHOLD CONDOMINIUMS AND COOPERATIVES

PART I. GENERAL PROVISIONS

§ **-1 Applicability.** This chapter applies to all lands on which are situated either residential condominium property regimes created under chapter 514A, or cooperative housing corporations, which are owned or held privately or by the state or by the counties, except Hawaiian homes lands subject to Article XII of the State Constitution and lands owned or held by the federal government.

PART II. RIGHTS OF LESSEES

§ **Residential lease; disclosure.** (a) Notwithstanding any provision to the contrary, for any sale of residential leasehold property, the deposit, receipt, offer, and acceptance contract (DROA) or other similar contract must state that no later than ten calendar days from acceptance, the seller shall, either directly or through the seller’s agent provide to the buyer for the buyer’s approval and acceptance one of the following lease documents which provide the major provisions of the lease, such as the length of the lease, lease rent terms, lease rent renegotiation dates, how renegotiated lease rents will be calculated, and surrender clause provisions:

- (1) Master lease and any amendments thereto; or
- (2) Apartment lease and any amendments thereto; or
- (3) For initial buyers of condominium apartments only, an unexpired preliminary, final or supplemental condominium property regime public report.

Upon receipt of the applicable lease document, the buyer shall have five calendar days to review, accept or reject the terms of the lease.

(b) In addition to the requirements set forth in subsection (a), the buyer, on resale of the unit, shall acknowledge receipt of the lease documents specified in subsection (a) through a signed receipt or a signed DROA or other contract. The receipt or contract shall include at least the following information:

- (1) A standardized summary of major provisions of the lease in plain language, such as the length of the lease, lease rent terms, lease rent renegotiation dates, how renegotiated lease rents will be calculated; and surrender clause provisions;
- (2) A standardized glossary of commonly used lease terms in plain language;
- (3) A statement that there are currently no statutory provisions for the mandatory conversion of leasehold condominiums and cooperatives, and that there are no assurances that such measures will be enacted in the future; and
- (4) A statement that the buyer has read and understands the provisions of the lease document.

(c) Within five calendar days of acknowledged receipt of the contract specified in subsection (a), the buyer shall have the right to cancel the offer to purchase with no loss of deposit.

(d) The seller and buyer may, on a standardized form, agree to reduce or extend the time period provided herein for the production and review of the applicable lease documents; provided that the agreement shall not constitute a waiver of the requirement to provide the applicable lease documents to the buyer.

§ Mandatory arbitration of rent renegotiation. (a) Every residential lease shall contain a provision for the mandatory arbitration of any rent renegotiation reopening.

(b) In the event that a residential lease does not contain a mandatory arbitration provision, the following arbitration procedure shall apply:

- (1) Rent shall be determined by three impartial arbitrators, who shall be recognized real estate appraisers;
- (2) Each party shall select an arbitrator, both of whom shall select the third arbitrator;
- (3) The three arbitrators shall determine the rent renegotiation which shall be final, conclusive, and binding on both parties; and
- (4) Lessor and lessee shall each pay one-half of all proper costs and expenses other than attorneys' fees."

SECTION 5. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 7. This Act shall take effect on July 1, 1990.

(Approved June 7, 1989.)

Note

1. Edited pursuant to HRS §23G-16.5.