

ACT 100

H.B. NO. 2944

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

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

SECTION 1. Section 467-1, Hawaii Revised Statutes, is amended by amending the definitions of “custodian or caretaker”, “real estate broker”, and “real estate salesperson” to read as follows:

““Custodian or caretaker” means any [person,] individual, who for compensation or valuable consideration, is employed [either directly or indirectly] as an employee by a single owner and has the responsibility to manage or care for that real property left in the [person’s] individual’s trust; provided that the term “custodian” or “caretaker” shall not include any [person] individual 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.

“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 salesperson” means any [person] individual 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] individual of [such] the option and

for the purpose or as a means of evading the licensing requirements of this chapter. Every real estate salesperson [must] shall be under the direction of a real estate broker for all real estate transactions. [All references in this chapter to “real estate salesman” includes “real estate salesperson”.]

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

“§467-2 Exceptions. The provisions requiring [a person to be licensed] licensing as a real estate broker or salesperson shall not apply:

- (1) To any [person] individual who, as owner of any real estate or acting under power of attorney from the owner, performs any of the acts enumerated in the definitions of real estate broker and real estate salesperson with reference to such real estate; provided that the term “owner” as used in this paragraph shall not include any [person] individual engaged in the business of real estate development or brokerage or include [such person] an individual who acquires any interest in any real estate for the purpose or as a means of evading the licensing requirements of this chapter; and provided further that the term [person] individual “acting under power of attorney” as used in this paragraph shall not include any [person] individual engaged in the business of real estate development or brokerage or [such person] any individual who acts under a power of attorney for the purpose or as a means of evading the licensing requirements of this chapter;
- (2) To any person acting as a receiver, trustee in bankruptcy, personal representative, or trustee acting under any trust agreement, deed of trust, or will, or otherwise acting under any order of authorization of any court;
- (3) To any [person] individual who leases, offers to lease, rents, or offers to rent, any real estate or the improvements thereon of which the [person] individual is the custodian or caretaker;
- (4) To any person who manages, rents, or operates a hotel; or
- (5) To any provider agency owning, leasing, operating, or managing a homeless facility, or any other program for the homeless authorized under chapter 358D.”

SECTION 3. Section 467-4, Hawaii Revised Statutes, is amended to read as follows:

“§467-4 Powers and duties of commission. In addition to any other powers and duties authorized by law, the real estate commission shall:

- (1) Grant licenses [to real estate brokers and real estate salespersons], registrations, and certificates pursuant to this chapter;
- (2) Adopt, amend, or repeal [such] rules as it may deem proper to [fully] effectuate this chapter and carry out its purpose, which is the protection of the general public in its real estate transactions. All rules shall be approved by the governor and the director of commerce and consumer affairs, and when adopted pursuant to chapter 91 shall have the force and effect of law. The rules may forbid acts or practices deemed by the commission to be detrimental to the accomplishment of the purpose of this chapter, and the rules may require real estate brokers and salespersons to make reports to the

commission containing [such] items of information as will better enable the commission to enforce this chapter and the rules, or as will better enable the commission from time to time to amend the rules to more fully effect the purpose of this chapter, and, further, the rules may require real estate brokers and salespersons to furnish reports to their clients containing [such] matters of information as the commission deems necessary to promote the purpose of this chapter. This enumeration of specific matters [which] that may properly be made the subject of rules shall not be construed to limit the commission's broad general power to make all rules necessary to fully effectuate the purpose of this chapter;

- (3) Enforce this chapter and rules adopted pursuant thereto;
- (4) Suspend, fine, terminate, or revoke any license, registration, or certificate for any cause prescribed by this chapter, or for any violation of the rules, and refuse to grant any license, registration, or certificate for any cause [which] that would be a ground for [revocation or] suspension, fine, termination, or revocation of a license[;], registration, or certificate;
- (5) Report to the governor and the legislature relevant information that shall include but not be limited to a summary of the programs and financial information about the trust funds, including balances and budgets, through the director of commerce and consumer affairs annually, before the convening of each regular session, and at [such] other times and in [such] other [manner] manners as the governor or the legislature may require concerning its activities;
- (6) Publish and distribute pamphlets and circulars containing [such] any information as [it deems] is proper to further the accomplishment of the purpose of this chapter; and
- (7) Enter into contract or contracts with qualified persons [or firms] to assist the commission in [conducting review of applications and monitoring the schools by conducting school visitations.] effectuating the purpose of this chapter."

SECTION 4. Section 467-8, Hawaii Revised Statutes, is amended to read as follows:

"§467-8 Prerequisites for [licensing.] a license, registration, or certificate. No license, registration, or certificate under this chapter shall be issued to:

- (1) Any [person] individual applying for a real estate broker or salesperson license who does not satisfy the requirements set forth in section 467-9.5;
- (2) Any [person] individual applying for a real estate broker or salesperson license unless the [person] individual has demonstrated by passing with a grade satisfactory to the commission an examination appropriate to the license sought that the [person] individual has a reasonable knowledge of:
 - (A) [estates,] Estates, interests, and rights in real property[.];
 - (B) [the] The documents or acts or occurrences by which [such] property is transferred or otherwise affected[.];
 - (C) [the] The rights and duties of an agent[.];
 - (D) [the] The laws of the State relating to real estate brokers and salespersons[.]; and

- (E) [such other] Other subjects [as] that the commission determines to be essential for the protection of the general public in its real estate transactions;
- (3) Any person who does not possess a reputation for or record of competency, honesty, truthfulness, financial integrity, and fair dealing;
- (4) Any partnership unless the real estate brokerage business thereof is under the direct management of a general partner or employee thereof and unless the general partner or employee holds a real estate broker's license; or
- (5) Any corporation unless the real estate brokerage business thereof is under the direct management of an officer or employee thereof and unless the officer or employee holds a real estate broker's license."

SECTION 5. Section 467-9, Hawaii Revised Statutes, is amended by amending the title to read:

"§467-9 License, registration, certificate, and applications."

SECTION 6. Section 467-9.5, Hawaii Revised Statutes, is amended to read as follows:

"§467-9.5 Prerequisites for examination. No [person] individual shall be eligible for the licensing examination unless:

- (1) The [person] individual is a citizen of the United States, or an alien who is authorized to work in the United States, and of the age of majority;
- (2) The [person] individual applying for the real estate salesperson examination has satisfactorily completed a prelicensing course for real estate salesperson candidates which includes real estate principles, or its equivalent, approved or accredited by the commission;
- (3) The [person] individual applying for the real estate broker examination has satisfactorily completed a prelicensing course for real estate [brokers] broker candidates, or its equivalent, approved or accredited by the commission; and
- (4) The [person] individual applying for the real estate broker examination:
 - (A) [is] Is licensed as an active or inactive Hawaii real estate salesperson[,]; and
 - (B) [has] Has been engaged in the real estate business as a licensed Hawaii real estate salesperson for a minimum period of two years on a full-time basis and has practical experience in the real estate field as determined by the commission.

The commission may waive a portion of the two years' experience, if the [person] individual has had other experience or education in real estate, which, in the opinion of the commission, is equivalent to experience, to be established by detailed explanatory affidavit or in [such] any other manner as may be determined by the commission.

Each [person] individual shall certify on the application for examination that the prerequisites set forth above have been or will be satisfied prior to the date of examination. The examination score of any [person] individual who has taken the examination without having satisfied the prerequisites set forth above shall be voided."

SECTION 7. Section 467-9.6, Hawaii Revised Statutes, is amended to read as follows:

"§467-9.6 Examination [fee]. Every applicant for a real estate examination shall file an application with either the [real estate] commission or the testing service agency designated by the [real estate] commission pursuant to rules of the commission to provide the testing service. The application shall be in a form prescribed by the commission and shall include a certification statement that the applicant has fulfilled or will fulfill by the date of the examination, the prerequisites for [written] examination. Every application shall be accompanied by an examination fee as determined by the commission by rules adopted pursuant to chapters 26 and 91. Applicants [may] shall apply for real estate licenses in [such] the manner [as] prescribed by the commission."

SECTION 8. Section 467-10, Hawaii Revised Statutes, is amended to read as follows:

"§467-10 Form of licenses[.], registrations, and certificates. The form of every license, registration, and certificate shall be prescribed by the [real estate] commission, and shall be issued in the name of the commission[, and signed by the chairman or a member thereof]."

SECTION 9. Section 467-15, Hawaii Revised Statutes, is amended to read as follows:

"§467-15 Hearings. In every case where it is proposed [to refuse to grant a license because of bad character or bad reputation for honesty, truthfulness, or fair dealing, or] to revoke or suspend the exercise of any license for any of the causes enumerated in section 467-14, the person concerned shall be given notice and hearing in conformity with chapter 91.

In all proceedings before it, the [real estate] commission and each member thereof shall have the same powers respecting administering oaths, compelling the attendance of witnesses and the production of documentary evidence, and examining witnesses, as are possessed by circuit courts. In cases of disobedience by any person of any order of the commission, or any member thereof, or of any subpoena issued by it, or the member, or the refusal of any witness to testify to any matter [regarding] to which the witness may be questioned lawfully, any circuit judge, on application by the commission, or a member thereof, shall compel obedience as in the case of disobedience of the requirements of a subpoena issued by a circuit court, or a refusal to testify therein."

SECTION 10. Section 467-15.5, Hawaii Revised Statutes, is amended to read as follows:

"§467-15.5 License issued after a revocation or automatic termination. A person whose license has been revoked, or automatically terminated in accordance with section 467-18(e), may apply for a license as a new applicant after the revocation or termination period and, if applicable, after repayment to the real estate recovery fund[.] and compliance with all the terms of the commission's final order. Any person who was previously licensed as a real estate broker[.] shall apply as a real estate salesperson. Any person who was previously licensed as a real estate salesperson[.] shall apply as a real estate salesperson. A new

applicant refused licensure as a real estate broker pursuant to this section shall not be entitled to a hearing on that refusal. [The commission may recognize an applicant's education, examination score, and experience previously used to satisfy the requirements of sections 467-8(2), and 467-9.5(2), (3) and (4), and commission rules relating thereto.]”

SECTION 11. Section 467-18, Hawaii Revised Statutes, is amended:

1. By amending subsection (a) to read as follows:

“(a) No action for a judgment [which] that 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] that 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] the action[.] and shall submit prescribed documents. The commission may intervene in and defend any such action.”

2. By amending subsection (e) to read as follows:

“(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 salesperson, the license of the broker or salesperson shall be automatically terminated upon the issuance of a court order authorizing payment from the real estate recovery fund. No [such] broker or salesperson shall be eligible to receive a new license until the expiration of at least [two] five years from the effective date of the termination of the license and until the terminated real estate broker or salesperson has repaid in full, plus interest at the rate provided for in section 478-3, the amount paid from the real estate recovery fund on the terminated real estate broker's or salesperson's account. A discharge in bankruptcy shall not relieve a person from the penalties and disabilities provided in this subsection.”

SECTION 12. Section 467-20, Hawaii Revised Statutes, is amended to read as follows:

“**§467-20 False statement.** It shall be unlawful for any person or the person's agent to testify before or file with the [real estate] commission, or the testing service agency designated by the [real estate] commission, any notice, statement, or other document required under this chapter, [which] that is false or untrue or contains any material misstatement of fact[. Any], or contains forgery. In addition to any sanctions or remedies as provided in this chapter, any violation of this section shall constitute a misdemeanor punishable pursuant to section 706-640 or 706-663, or both, and not pursuant to section 467-26.”

SECTION 13. Section 467-30, Hawaii Revised Statutes, is amended:

1. By amending the title to read as follows:

“**§467-30 Registration, licenses, and bonding [required to operate] requirements for condominium hotel[.] operators.**”

2. By amending subsections (b) and (c) to read as follows:

“(b) [Any] All condominium hotel operators shall register with the

commission as a sole proprietor, partnership, or corporation [operating a condominium hotel who is not a custodian or caretaker as defined in section 467-1] and shall:

- (1) Obtain a license as a real estate broker in compliance with this chapter and the rules of the commission;
- (2) Register on an annual basis as a condominium hotel operator[.] with the commission. Registration information shall include but not be limited to the number of [apartment units] apartments managed for others as well as the number of [apartment units] apartments owned by the condominium hotel operator. Any operator failing to register with the commission shall be subject to a fine not exceeding an amount equal to \$25 multiplied by the aggregate number of [units] apartments being utilized as a condominium hotel. Each month or fraction of a month of noncompliance shall be deemed a new and separate violation;
- (3) Provide evidence of fidelity bonding to the commission in an amount equal to \$500 multiplied by the aggregate number of [apartment units] apartments in the condominium hotel operation; provided that the minimum of the bond required by this paragraph shall not be less than \$20,000 nor greater than \$100,000. The aggregate number of [units] apartments excludes the number of [units] apartments owned by the condominium hotel operator either as a sole proprietor, partnership, or corporation or those [units] apartments included in a registered time share plan managed by a registered time share plan manager. The bond shall cover all of the condominium hotel operator's employees handling or having custody and control of either the condominium hotel operator's or the apartment owner's funds, or both; and
- (4) Pay an application fee and upon approval an initial and an annual registration fee as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91, which fees shall be deposited with the director of finance to the credit of the general fund[.];

provided that this subsection shall not apply to persons who are subject to section 467-2.

(c) In the course of operating a condominium hotel, neither a real estate broker license nor a real estate salesperson license shall be required of those employees of [any sole proprietor, partnership, or corporation performing] a condominium hotel operator who only perform or [facilitating] facilitate the delivery of customary hotel services."

3. By amending subsections (e) and (f) to read as follows:

"(e) As used in this section "operating a condominium hotel" includes the management of the [apartment units] apartments in a condominium project for purposes of providing transient lodging, and includes the renting or leasing of condominium [apartment units] apartments directly or indirectly from the apartment owners for purposes of providing transient lodging. The condominium hotel operator shall provide a written contract to the owner or owners of each apartment under the condominium hotel operation, expressing the exact agreements of each party including all financial and accounting obligations, and if applicable, the notification requirements of subsection (f).

(f) [Condominium hotel operators] A condominium hotel operator operating exclusively in condominium projects specifically authorized [as hotels] for

transient lodgings by county zoning and regulations and specifically permitted by the condominium project's declaration and bylaws [shall] may be exempt from subsection (b)(1); provided that [they shall] the condominium hotel operator:

- (1) Shall not provide or offer lodgings thirty days or longer;
- (2) Shall not be licensed as a real estate broker or a real estate salesperson;
- (3) Shall not conduct any other activities contained in the definition of the term "real estate brokers";
- (4) Shall appoint an employee or principal to have direct management and responsibility over condominium hotel operations; and
- (5) Shall provide evidence of written notification to all representing apartment owners of the real estate broker exemption and the provisions of this subsection including the nonapplicability of the real estate recovery fund, and apply to the commission for approval of the exemption [or exclusion] on a form provided by the commission."

SECTION 14. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 15. This Act shall take effect upon its approval.

(Approved June 8, 1994.)