

## ACT 245

S.B. NO. 1061

A Bill for an Act Relating to Real Estate Brokers.

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

SECTION 1. Section 467-9.5, Hawaii Revised Statutes, is amended to read as follows:

**“§467-9.5 Prerequisites for examination.** (a) No individual shall be eligible for the licensing examination unless the individual is:

(1) A citizen of the United States, or an alien who is authorized to work in the United States, and of the age of majority; and

(2) Applying for [the]:

(A) The real estate salesperson examination and has satisfactorily completed a commission-approved preclicensing course for real estate salesperson candidates, which includes real estate principles, or [their] its equivalent as determined by the commission;

[(3) Applying for the] or

(B) The real estate broker examination and:

[(A)] (i) Is currently licensed as a Hawaii real estate salesperson;

[(B)] (ii) Has satisfactorily completed a commission-approved preclicensing course for real estate broker candidates, or its equivalent as determined by the commission; and

[(C)](iii) Has experience as a full-time state-licensed real estate salesperson associated with a Hawaii-licensed real estate broker for [the three-year] at least three years of the five-year period immediately prior to the [licensing examination] submission of the experience certification application<sup>1</sup> and has

practical real estate salesperson experience, as certified by the principal broker or principal brokers during the subject period. The candidate shall secure commission approval of the candidate's experience certification application prior to the date of the examination. Subject to commission approval, a candidate may request equivalency for a portion of the experience requirement based on real estate license experience in another state, as determined by the commission~~[-or~~

(4) Specifically authorized by the commission].

(b) Each individual shall certify ~~[on the application for examination]~~ that the prerequisites set forth in this section have been or will be satisfied prior to the date of examination. The examination score of any individual who has taken the examination without having satisfied the prerequisites set forth in this section prior to the date of examination shall be voided.”

SECTION 2. Section 467-30, Hawaii Revised Statutes, is amended to read as follows:

**“§467-30 Registration ~~[-, licenses, and], bonding, and other requirements for condominium hotel operators.~~** (a) As used in this section, “condominium hotel” includes those apartments in a project as defined in section 514A-3 and subject to chapter 514A, which are used to provide transient lodging for periods of less than thirty days.

(b) All condominium hotel operators shall register with the commission as a sole proprietor, partnership, limited liability company, or corporation and shall:

~~(1) Obtain a license as a real estate broker in compliance with this chapter and the rules of the commission;~~

~~(2) (1) Register by submitting a completed commission application form with the commission requested information, receive commission approval prior to conducting condominium hotel activity, and re-register on or before the commission prescribed deadline prior to the registration expiration date. The registration and re-registration shall expire on December 31 of an even-numbered year. Registration information shall include but not be limited to the number of apartments managed for others as well as the number of 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 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) (2) Obtain and keep current a fidelity bond from an insurance company ~~[registered with]~~ authorized to issue fidelity bonds by the insurance division of the department of commerce and consumer affairs. The fidelity bond shall be in an amount equal to \$500 multiplied by the aggregate number of apartments in the condominium hotel operation; provided that the minimum amount of the fidelity bond required by this paragraph shall not be less than \$20,000 nor greater than \$100,000. The aggregate number of apartments excludes the number of apartments owned by the condominium hotel operator either as a sole proprietor, partnership, limited liability company, or corporation or those apartments included in a registered time share plan managed by a registered time share plan manager. The fidelity 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. Upon request by the commission, the condominium hotel operator shall provide evidence of a current fidelity bond or a certification statement from an insurance representative of an insurance company ~~[registered with]~~ authorized by the insurance division of the department of commerce and consumer affairs certifying that the fidelity bond is in effect and meets the requirements of this section and the rules adopted by the commission. The commission may adopt rules establishing conditions and terms by which it may grant ~~[an exemption or]~~ a bond alternative,<sup>(3)</sup> or permit deductibles. No ~~[fidelity bond exemption shall be granted to a]~~ condominium hotel operator ~~[who is exempt from paragraph (1);]~~ shall be exempt from the fidelity bond requirement; and

~~[(4)]~~ (3) Pay an application fee and an initial registration or a re-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 commerce and consumer affairs to the credit of the compliance resolution fund established pursuant to section 26-9(o);

provided that this ~~[subsection]~~ section 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 a condominium hotel operator who only perform or facilitate the delivery of customary hotel services.

(d) All employees handling or having custody or control of the funds received by the condominium hotel operator shall be covered by a fidelity bond. The fidelity bond shall protect the condominium hotel operator against fraudulent or dishonest acts by the employees of the condominium hotel operator.

(e) As used in this section "operating a condominium hotel" includes the management of the apartments in a condominium project for purposes of providing transient lodging, and includes the renting or leasing of condominium 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);]~~ (g).

(f) A condominium hotel operator ~~[operating exclusively]~~ shall operate in condominium projects specifically authorized for transient lodgings by county zoning and regulations and specifically permitted by the condominium project's declaration and bylaws ~~[may be exempt from subsection (b)(1); provided that the condominium hotel operator;]~~

(g) The registered 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 broker";
- (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]~~ section including the nonapplicability of the real estate

recovery fund[, and apply to the commission for approval of the exemption on a form provided by the commission].

~~[(g)]~~ (h) Any condominium hotel operator aggrieved by the fraudulent or dishonest acts of an employee shall act promptly and diligently to recover from the fidelity bond required by this section. The condominium hotel operator shall apply all proceeds received from the fidelity bond against all losses incurred by apartment owners due to fraudulent or dishonest acts by employees. If more than one apartment owner suffers a loss, the condominium hotel operator shall divide the proceeds among the apartment owners in proportion to each apartment owner's loss.

~~[(h)]~~ (i) All persons handling or having custody and control of either the condominium hotel operator's or the apartment owner's funds shall be either employees of the condominium hotel operator or principals of the condominium hotel operator.

(j) The registration and fidelity bond requirements of this section shall not apply to active real estate brokers, in compliance with and licensed under this chapter, conducting condominium hotel activity."

SECTION 3. Section 514A-95, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Every managing agent shall:

- (1) Be licensed as a real estate broker in compliance with chapter 467 and the rules of the commission or be a corporation authorized to do business under article 8 of chapter 412;
- (2) Register with the commission prior to conducting managing agent activity through approval of a completed registration application, payment of fees, and submission of any other additional information set forth by the commission. ~~[Beginning December 31, 1996, the]~~ The registration shall be for a biennial period with termination on December 31 of an even-numbered year. The commission shall prescribe a deadline date prior to the termination date for the submission of a completed reregistration application, payment of fees, and any other additional information set forth by the commission. Any managing agent who has not met the submission requirements by the deadline date shall be considered a new applicant for registration and subject to initial registration requirements. The information required to be submitted with any application shall include [but not be limited to evidence of and information on fidelity bond coverage,] the name, business address, phone number, and names of association of apartment owners managed;
- (3) ~~[Provide evidence with the initial registration application and reregistration application of a]~~ Obtain and keep current a fidelity bond in an amount equal to \$500 multiplied by the aggregate number of apartments of the association of apartment owners managed by the managing agent; provided that the amount of the fidelity bond shall not be less than \$20,000 nor greater than \$100,000. [Current] Upon request by the commission, the managing agent shall provide evidence of a current fidelity bond [includes] or a certification statement from an insurance company [registered with the] authorized by the insurance division of the department of commerce and consumer affairs certifying that the fidelity bond is in effect and meets the requirement of this section and the rules adopted by the commission. The managing agent shall permit only employees covered by the fidelity bond to handle or have custody or control of any association of apartment owners funds, except any principals of the managing agent that cannot be covered by the fidelity

bond. The fidelity bond shall protect the managing agent against the loss of any association of apartment owners' moneys, securities, or other properties caused by the fraudulent or dishonest acts of employees of the managing agent. Failure to obtain or maintain a fidelity bond in compliance with this chapter and the rules adopted pursuant thereto, including failure to provide evidence of the fidelity bond coverage in a timely manner to the commission, shall result in non-registration or the automatic termination of the registration, unless an approved exemption or a bond alternative is presently maintained. A managing agent who is unable to obtain a fidelity bond may seek an exemption from the fidelity bond requirement from the commission. The commission shall adopt rules establishing the conditions and terms by which it may grant an exemption or a bond alternative, or permit deductibles;

- (4) Act promptly and diligently to recover from the fidelity bond, if the fraud or dishonesty of the managing agent's employees causes a loss to an association of apartment owners, and apply the fidelity bond proceeds, if any, to reduce the association of apartment owners' loss. If more than one association of apartment owners suffers a loss, the managing agent shall divide the proceeds among the associations of apartment owners in proportion to each association of apartment owners' loss. An association of apartment owners may request a court order requiring the managing agent to act promptly and diligently to recover from the fidelity bond. If an association of apartment owners cannot recover its loss from the fidelity bond proceeds of the managing agent, the association of apartment owners may recover by court order from the real estate recovery fund established under section 467-16, provided that:
  - (A) The loss is caused by the fraud, misrepresentation, or deceit of the managing agent or its employees;
  - (B) The managing agent is a licensed real estate broker; and
  - (C) The association of apartment owners fulfills the requirements of sections 467-16 and 467-18 and any applicable rules of the commission;
- (5) Pay a nonrefundable application fee and, upon approval, an initial registration fee, and subsequently pay a reregistration fee, as prescribed by rules adopted by the director of commerce and consumer affairs pursuant to chapter 91. A compliance resolution fee shall also be paid pursuant to section 26-9(o) and the rules adopted pursuant thereto; and
- (6) Report immediately in writing to the commission any changes to the information contained on the registration application[~~-, the fidelity bond;~~] or any other documents provided for registration. Failure to do so may result in termination of registration and subject the managing agent to initial registration requirements."

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 14, 2001.)

#### Note

1. "Submission of the experience certification application" should be underscored.