

ACT 176

S.B. NO. 2861

A Bill for an Act Relating to Exclusive Listing Agreements.

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

SECTION 1. This Act shall be known, and may be cited, as the Exclusive Listing Agreements Act.

SECTION 2. The legislature finds that companies across the United States have been targeting vulnerable property owners to sign long-term exclusive listing agreements in exchange for a nominal payment upfront and recording these agreements as liens on the property. These complex contracts are essentially high-interest loans that make selling, refinancing, or transferring real estate difficult for property owners, and can deprive property owners of the equity in their property. Many property owners who sign exclusive listing agreements may not be fully aware of the impact of these agreements on their property rights and the rights of future owners of the property, including family members who inherit the property. Investigations and lawsuits from other states assert that companies are deceptively advertising their agreements' terms and failing to fully disclose the terms to property owners.

The legislature further finds that there is a growing trend among state legislatures to ban exclusive listing agreements. Since 2021, consumer protection advocates and real estate and title industry representatives have worked to ban predatory exclusive listing agreements in fifteen states. The legislature recognizes that long-term exclusive listing agreements, and the recording of exclusive listing agreements as liens, could have a devastating impact on Hawaii's property owners by unfairly encumbering a property owner's title, reducing the property owner's equity, and having an anti-competitive effect on the sale of real property in Hawaii. Property owners who are subject to unfair and deceptive business practices involving exclusive listing agreements should be provided appropriate and reasonable remedies such as obtaining a court order declaring the agreement to be void and unenforceable and recovering damages.

Accordingly, the purpose of this Act is to prevent unfair exclusive listing agreements from becoming prevalent in the State by:

- (1) Making certain long-term exclusive listing agreements for the sale of residential real property void and unenforceable under the state law that governs unfair and deceptive practices;
- (2) Prohibiting the recording or filing of exclusive listing agreements of any duration with the bureau of conveyances; and
- (3) Establishing certain remedies for persons who are subject to unfair exclusive listing agreements.

SECTION 3. Chapter 481B, Hawaii Revised Statutes, is amended by adding a new section to part I to be appropriately designated and to read as follows:

“§481B- Exclusive listing agreements; prohibited. (a) An exclusive listing agreement shall be void and unenforceable under this chapter if the agreement:

- (1) Lasts longer than twelve months from the date the agreement was made;
- (2) Purports to run with the land or be binding on future owners of interests in the real property;

- (3) Allows for assignment of the right to provide services without notice to and the consent of the owner of the residential real property; or
- (4) Purports to create a lien, encumbrance, or other real property security interest.

(b) It shall be unlawful to present for recording or filing, or otherwise attempt to record to file, with the bureau of conveyances an exclusive listing agreement of any duration or any memoranda or notice of an exclusive listing agreement.

(c) It shall be unlawful to enforce, or attempt to enforce, an exclusive listing agreement that is made, or that is presented for recording or filing with the bureau of conveyances, in violation of this section.

(d) An exclusive listing agreement that is made or presented for recording or filing with the bureau of conveyances in violation of this section shall not be enforceable, have any legal effect, or provide actual or constructive notice to any person interested in the residential real property that is identified in the exclusive listing agreement.

(e) An exclusive listing agreement that is made or is presented for recording or filing with the bureau of conveyances in violation of this section shall not operate as a lien, encumbrance, or security interest.

(f) No owner or buyer shall be required to record any document to remove an exclusive listing agreement that is made or is presented for recording or filing with the bureau of conveyances in violation of this section.

(g) If an exclusive listing agreement, memorandum of the agreement, or notice is recorded in violation of this section, then a person with an interest in the real property that is subject to the agreement may apply to a court of competent jurisdiction in the county where the real property is located to record a court order declaring the agreement, memorandum of agreement, or notice void and unenforceable.

(h) A violation of this section shall be deemed an unfair or deceptive practice in accordance with section 480-2, and shall be subject to the provisions of chapter 480, as well as the provisions of this chapter.

(i) In addition to any other rights provided by law, any person with an interest in real property identified by a recording that is void and unenforceable under subsection (a) may recover damages, costs, and attorney's fees that may be proved against the service provider named in the void exclusive listing agreement. Any actual damages, costs, and attorney's fees that are proved against the service provider shall not be offset by the consideration paid by the service provider to the owner of the real property.

(j) A service provider has no right to a refund of the consideration paid to the owner in connection with a void exclusive listing agreement.

(k) For the purposes of this section:

"Exclusive listing agreement" means a contract or agreement providing an exclusive right to list or sell residential real property, including a contract or agreement to enter into an agreement or arrangement.

"Residential real property" means real property located in the State that is used primarily for personal, family, or household purposes and consists of one to four dwelling units.

"Service provider" means a legal person, including an entity or organization, who provides a service related to real property, including a real estate broker or real estate salesperson. For purposes of this definition, "real estate broker" and "real estate salesperson" have the same meaning as defined in section 467-1."

SECTION 4. New statutory material is underscored.¹

SECTION 5. This Act shall take effect on November 1, 2024.
(Approved July 2, 2024.)

Note

1. Edited pursuant to HRS §23G-16.5.