

HB279 HD2

Measure Title: RELATING TO REAL ESTATE BROKERS AND SALESPERSONS.

Report Title: Real Estate Brokers; Salespersons; Buyer

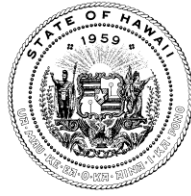
Description: Allows the Real Estate Commission to take disciplinary action if a real estate broker or salesperson for a seller or buyer of real estate acts in a manner that prohibits a prospective buyer or seller from being able to retain a real estate broker or salesperson. (HB279 HD2)

Companion:

Package: None

Current Referral: CPN, JDL

Introducer(s): HASHEM, KOBAYASHI, MCKELVEY, OSHIRO



DAVID Y. IGE
GOVERNOR

SHAN S. TSUTSUI
LT. GOVERNOR

**STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

335 MERCHANT STREET, ROOM 310
P.O. Box 541
HONOLULU, HAWAII 96809
Phone Number: 586-2850
Fax Number: 586-2856
www.hawaii.gov/dcca

CATHERINE P. AWAKUNI COLÓN
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI
DEPUTY DIRECTOR

**PRESENTATION OF
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
REGULATED INDUSTRIES COMPLAINTS OFFICE**

**TO THE SENATE COMMITTEE ON
COMMERCE AND CONSUMER PROTECTION**

**TWENTY-EIGHTH STATE LEGISLATURE
REGULAR SESSION, 2015**

**TUESDAY, MARCH 17, 2015
9:00 A.M.**

**TESTIMONY ON HOUSE BILL NO. 279 H.D.2
RELATING TO RELATING TO REAL ESTATE BROKERS AND SALESPERSONS**

**TO THE HONORABLE ROSALYN H. BAKER, CHAIR,
AND TO THE HONORABLE BRIAN T. TANIGUCHI, VICE CHAIR,
AND MEMBERS OF THE COMMITTEE:**

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify on House Bill No. 279 H.D.2, Relating to Real Estate Brokers and Salespersons. My name is Daria Loy-Goto, Complaints and Enforcement Officer for the Department's Regulated Industries Complaints Office ("RICO"). RICO offers the following testimony in support of the bill.

House Bill No. 279 H.D.2 adds a new basis for disciplinary action against a real estate broker or salesperson who acts in a manner that prohibits a seller or

purchaser of real estate from retaining the services of a real estate broker or salesperson.

RICO is aware that there may be instances where prospective buyers are prohibited from obtaining the services of a real estate broker or salesperson when purchasing real estate and agrees that such practices should be discouraged.

House Bill No. 279 H.D.2 appropriately applies to a real estate broker or salesperson, acting on behalf of either the seller or purchaser, from prohibiting the other party to the transaction from retaining the services of a real estate broker or salesperson. RICO supports the bill's current focus on the conduct of a real estate broker or salesperson licensee, rather than on whether the licensee is acting on behalf of the seller or purchaser.

Thank you for the opportunity to testify on House Bill No. 279 H.D.2. I will be happy to answer any questions the members of the Committee may have.

**PRESENTATION OF THE
REAL ESTATE COMMISSION**

TO THE SENATE COMMITTEE ON
COMMERCE AND CONSUMER PROTECTION

TWENTY-EIGHTH LEGISLATURE
Regular Session of 2015

Tuesday, March 17, 2015
9:00 a.m.

**TESTIMONY ON HOUSE BILL NO. 279, H.D. 2 - RELATING TO REAL ESTATE
BROKERS AND SALESPERSONS.**

TO THE HONORABLE ROSALYN H. BAKER, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Nikki Senter and I am the Chairperson of the Hawaii Real Estate Commission ("Commission"). The Commission appreciates the opportunity to present supporting testimony on House Bill No. 279, H.D. 2, Relating to Real Estate Brokers and Salespersons.

This measure will allow the Commission to take disciplinary action against a real estate licensee acting in a manner harmful to the consuming public.

The Commission supports this consumer protective measure and agrees with the purpose of restricting a real estate licensee from prohibiting prospective purchasers or sellers from retaining the services of a real estate broker or salesperson.

Thank you for the opportunity to provide testimony supporting House Bill No. 279, H.D. 2.

March 17, 2015

The Honorable Rosalyn H. Baker, Chair

Senate Committee on Commerce and Consumer Protection
State Capitol, Room 229
Honolulu, Hawaii 96813

RE: H.B. 279, H.D.2, Relating to Real Estate Brokers and Salespersons

HEARING: Tuesday, March 17, 2015, at 9:00 a.m.

Aloha Chair Baker, Vice Chair Taniguchi, and Members of the Committee:

I am Myoung Oh, Government Affairs Director, here to testify on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its 8,400 members. HAR offers **comments** on H.B. 279, H.D.2 which allows the Real Estate Commission to take disciplinary action if a real estate broker or salesperson for a seller or buyer of real estate acts in a manner that prohibits a prospective buyer or seller from being able to retain a real estate broker or salesperson.

This bill proposes to prohibit a real estate broker or salesperson that is representing a seller or buyer of real estate from preventing a prospective buyer or seller from retaining real estate representation.

Typically, most new condominium and single family home developments have policies that require that the prospective buyer's agent be present at the first visit and any future visits. If a buyer's agent is not present at the first visit with the client, the developer's brokerage may claim the entire transaction. In other words, if the buyer's agent wants to participate in the cooperating brokerage fee offered by the developer's agent for selling a unit in the development, they must accompany the client to the property at the first and subsequent visits. Not all developer's agent have this business model but many do, and the policy disclaimer is usually contained in their advertising and marketing materials for the project/property.

Some developer's agent will accept an alternative, such as permitting the prospective buyer's agent to phone ahead and preregister. Or, they may also acknowledge that the buyer is represented provided that the unaccompanied buyer presents the agents business card upon entry and before touring the model units. However, there are developer's agent that don't allow these exceptions or work-around.

If a buyer visits a new project development without their agent's knowledge, there is no opportunity for the buyer's agent to prepare the buyer for this circumstance. The developer's

agent is making business decisions that work for the developer and the business model they are retained under. In this instance, the buyer is still allowed to have their own agent but the buyer is likely responsible for compensating the buyer's agent for representation if the buyer's agent did not accompany the buyer on the first visit to the project.

In real estate, "agency relationships" are created when one person agrees to act on another's behalf, or represent them in dealings with a third party. Once an agency relationship is established, agents owe their clients "fiduciary duties" of loyalty, disclosure, confidentiality, accounting, obedience and reasonable care. They are typically required to place their clients' interests ahead of their own, providing services with honesty and good faith while avoiding conflicts of interest or self-dealing.

While HAR believes H.B. 279 attempts to simply require developer's agent to accept a prospective buyer's agent, this is a matter that could be addressed through revisions to Hawaii's agency law.

Mahalo for the opportunity to testify.