
A BILL FOR AN ACT

RELATING TO REAL ESTATE BROKERS AND SALESPERSONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

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

3 "**§467-14 Revocation, suspension, and fine.** In addition to
4 any other actions authorized by law, the commission may revoke
5 any license issued under this chapter, suspend the right of the
6 licensee to use the license, fine any person holding a license,
7 registration, or certificate issued under this chapter, or
8 terminate any registration or certificate issued under this
9 chapter, for any cause authorized by law, including but not
10 limited to the following:

11 (1) Making any misrepresentation concerning any real
12 estate transaction; provided that the real estate
13 broker or salesperson shall not be held liable for
14 misrepresentations based upon a good faith reliance on
15 the information provided:

16 (A) By a reputable property inspector;

17 (B) By the seller or a representative of the seller;



- 1 (C) By a surveyor, contractor, or other licensed
- 2 professional;
- 3 (D) By a community or homeowner association's
- 4 representative;
- 5 (E) By a property manager; or
- 6 (F) In public records;
- 7 (2) Making any false promises concerning any real estate
- 8 transaction of a character likely to mislead another;
- 9 (3) Pursuing a continued and flagrant course of
- 10 misrepresentation, or making of false promises through
- 11 advertising or otherwise;
- 12 (4) Without first having obtained the written consent to
- 13 do so of both parties involved in any real estate
- 14 transaction, acting for both the parties in connection
- 15 with the transaction, or collecting or attempting to
- 16 collect commissions or other compensation for the
- 17 licensee's services from both of the parties;
- 18 (5) When the licensee, being a real estate salesperson,
- 19 accepts any commission or other compensation for the
- 20 performance of any of the acts enumerated in the
- 21 definition set forth in section 467-1 of real estate
- 22 salesperson from any person other than the real estate



1 salesperson's employer or the real estate broker with
2 whom the real estate salesperson associates or, being
3 a real estate broker or salesperson, compensates one
4 not licensed under this chapter to perform any such
5 act;

6 (6) When the licensee, being a real estate salesperson,
7 acts or attempts to act as a real estate broker or
8 represents, or attempts to represent, any real estate
9 broker other than the real estate salesperson's
10 employer or the real estate broker with whom the real
11 estate salesperson is associated;

12 (7) Failing, within a reasonable time, to account for any
13 moneys belonging to others that may be in the
14 possession or under the control of the licensee;

15 (8) Any other conduct constituting fraudulent or dishonest
16 dealings;

17 (9) When the licensee, being a partnership, permits any
18 member of the partnership who does not hold a real
19 estate broker's license to actively participate in the
20 real estate brokerage business thereof or permits any
21 employee thereof who does not hold a real estate

- 1 salesperson's license to act as a real estate
2 salesperson therefor;
- 3 (10) When the licensee, being a corporation, permits any
4 officer or employee of the corporation who does not
5 hold a real estate broker's license to have the direct
6 management of the real estate brokerage business
7 thereof or permits any officer or employee thereof who
8 does not hold a real estate salesperson's license to
9 act as a real estate salesperson therefor;
- 10 (11) When the licensee, being a real estate salesperson,
11 fails to file with the commission a written statement
12 setting forth the name of the real estate broker by
13 whom the licensee is employed or with whom the
14 licensee is associated;
- 15 (12) When the licensee fails to obtain on the contract
16 between the parties to the real estate transaction
17 confirmation of who the real estate broker represents;
- 18 (13) Violating this chapter; chapter 484, 514A, 514B, 514E,
19 or 515; section 516-71; or the rules adopted pursuant
20 thereto;
- 21 (14) Splitting fees with or otherwise compensating others
22 not licensed hereunder for referring business;



1 provided that notwithstanding paragraph (5), a real
2 estate broker may pay a commission to:

3 (A) A licensed real estate broker of another state,
4 territory, or possession of the United States if
5 that real estate broker does not conduct in this
6 State any of the negotiations for which a
7 commission is paid;

8 (B) A real estate broker lawfully engaged in real
9 estate brokerage activity under the laws of a
10 foreign country if that real estate broker does
11 not conduct in this State any of the negotiations
12 for which a commission is paid; or

13 (C) A travel agency that in the course of business as
14 a travel agency or sales representative, arranges
15 for compensation the rental of a transient
16 vacation rental; provided that for purposes of
17 this paragraph, "travel agency" means any person
18 that, for compensation or other consideration,
19 acts or attempts to act as an intermediary
20 between a person seeking to purchase travel
21 services and any person seeking to sell travel
22 services, including an air or ocean carrier;



- 1 (15) Commingling the money or other property of the
2 licensee's principal with the licensee's own;
- 3 (16) Converting other people's moneys to the licensee's own
4 use;
- 5 (17) The licensee is adjudicated insane or incompetent;
- 6 (18) Failing to ascertain and disclose all material facts
7 concerning every property for which the licensee
8 accepts the agency, so that the licensee may fulfill
9 the licensee's obligation to avoid error,
10 misrepresentation, or concealment of material facts;
11 provided that the real estate broker or salesperson
12 shall not be held liable for reliance in good faith
13 and with due care on a disclosure that is prepared
14 pursuant to section 508D-9; provided further that for
15 the purposes of this paragraph, the fact that an
16 occupant has AIDS or AIDS Related Complex (ARC) or has
17 been tested for HIV (human immunodeficiency virus)
18 infection shall not be considered a material fact;
- 19 (19) When the licensee obtains or causes to be obtained,
20 directly or indirectly, any licensing examination or
21 licensing examination question for the purpose of



1 disseminating the information to future takers of the
2 examination for the benefit or gain of the licensee;
3 (20) Failure to maintain a reputation for or record of
4 competency, honesty, truthfulness, financial
5 integrity, and fair dealing; or
6 (21) Acquiring an ownership interest, directly or
7 indirectly, or by means of a subsidiary or affiliate,
8 in any distressed property that is listed with the
9 licensee or within three hundred sixty-five days after
10 the licensee's listing agreement for the distressed
11 property has expired or is terminated.

12 For the purposes of paragraphs (1) and (18), the real
13 estate commission and the regulated industries complaints office
14 of the department of commerce and consumer affairs shall
15 determine whether the licensee relied in good faith on
16 information provided by other persons or third parties.

17 As used in this section, "distressed property" has the same
18 meaning as set forth in section 480E-2.

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



- 1 SECTION 2. New statutory material is underscored.
- 2 SECTION 3. This Act shall take effect upon its approval.



Report Title:

Real Estate Brokers and Salespersons; Licensing and Penalties;
Good Faith Reliance

Description:

Amends provisions relating to the licensing and penalties of real estate brokers and salespersons by clarifying that real estate brokers and salespersons: (1) Cannot be held liable for misrepresentations based upon a good faith reliance; and (2) Cannot be held liable for failure to ascertain and disclose all material facts concerning a property if there was a good faith reliance on a prepared disclosure statement. (SB3002 HD1)

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