

JAN 20 2017

A BILL FOR AN ACT

RELATING TO REAL ESTATE BROKERS.

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

1 SECTION 1. The legislature finds that existing law does
2 not specifically permit licensed real estate brokers to have
3 their commissions paid to a corporation or partnership. This
4 can cause issues for real estate brokers, as these corporations
5 and partnerships often pay for all associated business expenses,
6 such as rent and salaries.

7 Accordingly, the purpose of this Act is to permit a
8 licensed real estate broker to pay a commission to a corporation
9 or partnership; provided that the licensed real estate broker:

10 (1) Earned the commission on behalf of the corporation or
11 partnership; and

12 (2) Is a member, officer, shareholder, or partner of the
13 corporation or partnership.

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

16 "§467-14 Revocation, suspension, and fine. In addition to
17 any other actions authorized by law, the commission may revoke



1 any license issued under this chapter, suspend the right of the
2 licensee to use the license, fine any person holding a license,
3 registration, or certificate issued under this chapter, or
4 terminate any registration or certificate issued under this
5 chapter, for any cause authorized by law, including but not
6 limited to the following:

- 7 (1) Making any misrepresentation concerning any real
8 estate transaction;
- 9 (2) Making any false promises concerning any real estate
10 transaction of a character likely to mislead another;
- 11 (3) Pursuing a continued and flagrant course of
12 misrepresentation, or making of false promises through
13 advertising or otherwise;
- 14 (4) Without first having obtained the written consent to
15 do so of both parties involved in any real estate
16 transaction, acting for both the parties in connection
17 with the transaction, or collecting or attempting to
18 collect commissions or other compensation for the
19 licensee's services from both of the parties;
- 20 (5) When the licensee, being a real estate salesperson,
21 accepts any commission or other compensation for the



1 performance of any of the acts enumerated in the
2 definition set forth in section 467-1 of real estate
3 salesperson from any person other than the real estate
4 salesperson's employer or the real estate broker with
5 whom the real estate salesperson associates or, being
6 a real estate broker or salesperson, compensates one
7 not licensed under this chapter to perform any such
8 act;

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

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

18 (8) Any other conduct constituting fraudulent or dishonest
19 dealings;

20 (9) When the licensee, being a partnership, permits any
21 member of the partnership who does not hold a real



S.B. NO. 395

1 estate broker's license to actively participate in the
2 real estate brokerage business thereof or permits any
3 employee thereof who does not hold a real estate
4 salesperson's license to act as a real estate
5 salesperson therefor;

6 (10) When the licensee, being a corporation, permits any
7 officer or employee of the corporation who does not
8 hold a real estate broker's license to have the direct
9 management of the real estate brokerage business
10 thereof or permits any officer or employee thereof who
11 does not hold a real estate salesperson's license to
12 act as a real estate salesperson therefor;

13 (11) When the licensee, being a real estate salesperson,
14 fails to file with the commission a written statement
15 setting forth the name of the real estate broker by
16 whom the licensee is employed or with whom the
17 licensee is associated;

18 (12) When the licensee fails to obtain on the contract
19 between the parties to the real estate transaction
20 confirmation of who the real estate broker represents;



- 1 (13) Violating this chapter; chapter 484, 514A, 514B, 514E,
2 or 515; section 516-71; or the rules adopted pursuant
3 thereto;
- 4 (14) Splitting fees with or otherwise compensating others
5 not licensed hereunder for referring business;
6 provided that notwithstanding paragraph (5), a real
7 estate broker may pay a commission to:
- 8 (A) A licensed real estate broker of another state,
9 territory, or possession of the United States if
10 that real estate broker does not conduct in this
11 State any of the negotiations for which a
12 commission is paid;
- 13 (B) A real estate broker lawfully engaged in real
14 estate brokerage activity under the laws of a
15 foreign country if that real estate broker does
16 not conduct in this State any of the negotiations
17 for which a commission is paid; [e~~r~~]
- 18 (C) A travel agency that in the course of business as
19 a travel agency or sales representative, arranges
20 for compensation the rental of a transient
21 vacation rental; provided that for purposes of



1 this paragraph, "travel agency" means any person
2 that, for compensation or other consideration,
3 acts or attempts to act as an intermediary
4 between a person seeking to purchase travel
5 services and any person seeking to sell travel
6 services, including an air or ocean carrier; or

7 (D) A corporation or partnership; provided that the
8 licensed real estate broker:

9 (i) Earned the commission on behalf of the
10 corporation or partnership; and

11 (ii) Is a member, officer, shareholder, or
12 partner of the corporation or partnership;

13 (15) Commingling the money or other property of the
14 licensee's principal with the licensee's own;

15 (16) Converting other people's moneys to the licensee's own
16 use;

17 (17) The licensee is adjudicated insane or incompetent;

18 (18) Failing to ascertain and disclose all material facts
19 concerning every property for which the licensee
20 accepts the agency, so that the licensee may fulfill
21 the licensee's obligation to avoid error,



1 misrepresentation, or concealment of material facts;
2 provided that for the purposes of this paragraph, the
3 fact that an occupant has AIDS or AIDS Related Complex
4 (ARC) or has been tested for HIV (human
5 immunodeficiency virus) infection shall not be
6 considered a material fact;

7 (19) When the licensee obtains or causes to be obtained,
8 directly or indirectly, any licensing examination or
9 licensing examination question for the purpose of
10 disseminating the information to future takers of the
11 examination for the benefit or gain of the licensee;

12 (20) Failure to maintain a reputation for or record of
13 competency, honesty, truthfulness, financial
14 integrity, and fair dealing;

15 (21) Acquiring an ownership interest, directly or
16 indirectly, or by means of a subsidiary or affiliate,
17 in any distressed property that is listed with the
18 licensee or within three hundred sixty-five days after
19 the licensee's listing agreement for the distressed
20 property has expired or is terminated; or



1 (22) When the licensee, being a real estate broker or a
 2 real estate salesperson, acting on behalf of a seller
 3 or purchaser of real estate, acts in a manner that
 4 prohibits a prospective purchaser or prospective
 5 seller of real estate from being able to retain the
 6 services of a real estate broker or real estate
 7 salesperson.

8 For the purposes of paragraphs (1) and (18), the real
 9 estate commission shall consider whether the licensee relied in
 10 good faith on information provided by other persons or third
 11 parties.

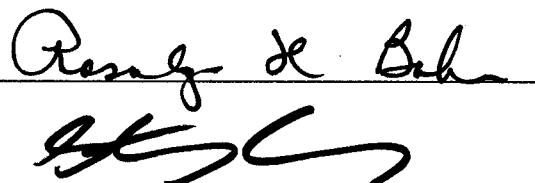

12 As used in this section, "distressed property" has the same
 13 meaning as set forth in section 480E-2.

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

17 SECTION 3. Statutory material to be repealed is bracketed
 18 and stricken. New statutory material is underscored.

19 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY: Randy de Bebe



S.B. NO. 395

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S.B. NO. 395

Report Title:

Real Estate Brokers; Commissions; Corporations; Partnerships

Description:

Permits a licensed real estate broker to pay a commission to a corporation or partnership; provided that the licensed real estate broker earned the commission on behalf of the corporation or partnership and is a member, officer, shareholder, or partner of the corporation or partnership.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

