

Hawai'i Protects Consumers' Ability to Retain Real Estate Licensees

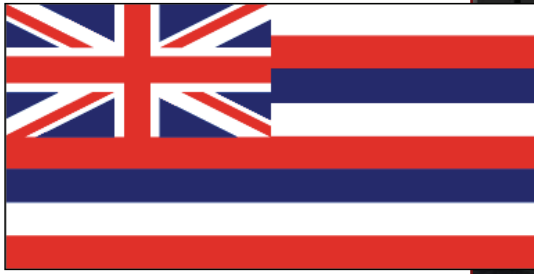


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Hawai'i House Bill 279 adds a new section to the state's real estate licensing laws that empower the Hawai'i Real Estate Commission to take disciplinary action against licensees for specified types of misconduct. In addition to existing violations such as misrepresentation, fraudulent or dishonest conduct and failing to account for money belonging to others, to name just a few, the legislation adds a new Hawai'i Revised Statutes, section 467-14(22), which permits the imposition of disciplinary sanctions "When the licensee, being a real estate broker or a real estate salesperson, acting on behalf of a seller or purchaser of real estate, acts in a manner that prohibits a prospective purchaser or prospective seller of real estate from being able to retain the services of a real estate broker or real estate salesperson."

As originally introduced, the legislation would have prohibited such conduct only with respect to a prospective purchaser's ability to retain the services of a real estate licensee. Written testimony filed in connection with the bill indicates that it was aimed primarily at situations involving condominiums and single-family residential developments in which developers and/or their real estate agents impose policies that limit the circumstances under which prospective purchasers can retain the services of a real estate licensee who will act on their behalf and receive compensation through a cooperating commission agreement with the seller's agent. As explained by testimony filed by the Hawai'i Association of REALTORS® (HAR), such policies are not necessarily uniform among developers but commonly require the agent to be present at the prospective purchaser's first visit to the development and register as the purchaser's agent. Some require

the agent to be present at all future visits to the property, as well. If the agent is not present, a cooperating commission will not be offered. In that scenario, prospective purchasers are faced with the option of either completing transactions without the assistance of a real estate licensee of their own choosing to act on their behalf, or paying their broker a commission that would otherwise be apportioned from the commission paid to the developer's agent. According to HAR, some developers' agents will accept an alternative, such as permitting prospective purchasers' agents to preregister, but some do not. Others may acknowledge that unaccompanied purchasers are represented by their own agent, as long as they present the agent's business card upon entry and before touring the property. However, HAR pointed out that, "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." HAR suggested that the goal of Senate Bill 279 might be better served through an amendment to Hawai'i's agency relationship statutes, which are contained in the real estate licensing laws, but requested an extended effective date if the bill passed in order to allow time for revision of HAR's transaction forms.

During the legislative process, testimony offered by the Hawai'i Real Estate Commission suggested that the new disciplinary provision should apply not only to licensees acting on behalf of purchasers, but also to those acting on behalf of sellers. The Commission supported Senate Bill 279, as amended, as an appropriate prohibition against conduct that is harmful to consumers. The new statute has been codified as Act 041 and will take effect on November 2, 2015.