

CHAPTER 467
REAL ESTATE BROKERS AND SALESPERSONS

SECTION

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§467-1 Definitions. As used in this chapter:

"Commission" means the real estate commission of the State.

"Custodian or caretaker" means any individual, who for compensation or valuable consideration, is employed as an employee by a single owner and has the responsibility to manage or care for that real property left in the individual's trust; provided that the term "custodian" or "caretaker" shall not include any individual who leases or offers to lease, or rents or offers to rent, any real estate for more than a single owner; provided further that a single owner shall not include an association of owners of a condominium, cooperative, or planned unit development.

"Hotel" includes a structure or structures used primarily for the business of providing transient lodging for periods of less than thirty days and which furnishes customary hotel services including, but not limited to, front desk, restaurant, daily maid and linen service, bell service, or telephone switchboard; provided that for the purposes of this chapter, apartments in a project as defined by section 514B-3 that provide customary hotel services shall be excluded from the definition of hotel. The definition of hotel as set forth in this section shall be in addition to and supplement the definition of "hotel" as set forth in the various county ordinances.

"Real estate" means and includes lands, the improvements thereon, leaseholds, and all other interests in real property. It shall be immaterial that a transaction also involves property other than real estate, as for example a transaction for the sale of an ongoing business, an asset of which consists of a leasehold or other interest in real property. In such a case, to the extent that real estate is involved, it shall be considered a real estate transaction for the purpose of this definition.

"Real estate broker" means any person who, for compensation or a valuable consideration, sells or offers to sell, buys or offers to buy, or negotiates the purchase or sale or exchange of real estate, or lists, or solicits for prospective purchasers, or who leases or offers to lease, or rents or offers to rent, or manages or offers to manage, any real estate, or the improvements thereon, for others, as a whole or partial vocation; or who secures, receives, takes, or accepts, and sells or offers to sell, any option on real estate without the exercise by the person of the option and for the purpose or as a means of evading the licensing requirement of this chapter.

"Real estate salesperson" means any individual who, for a compensation or valuable consideration, is employed either directly or indirectly by a real estate broker, or is an independent contractor in association with a real estate broker, to sell or offer to sell, buy or offer to buy, or list, or solicit for prospective purchasers, or who leases or offers to lease, or rents or offers to rent, or manages or offers to manage, any real estate, or the improvements thereon, for others as a whole or partial vocation; or who secures, receives, takes, or accepts, and sells or offers to sell, any option on real estate without the exercise by the individual of the option and for the purpose or as a means of evading the licensing requirements of this chapter. Every real estate salesperson shall be under the direction of a real estate broker for all real estate transactions.

§467-1.5 Employer-employee relationship. Nothing in this chapter or in any of the rules adopted to implement this chapter shall be deemed to create an employer-employee relationship between a real estate broker and the broker's licensees; provided that the commission

shall have all power necessary to regulate the relationships, duties and liabilities among real estate brokers and real estate salespersons in order to protect the public.

§467-1.6 Principal brokers. (a) The principal broker shall have direct management and supervision of the brokerage firm and its real estate licensees.

(b) The principal broker shall be responsible for:

- (1) The client trust accounts, disbursements from those accounts, and the brokerage firm's accounting practices;
- (2) The brokerage firm's records, contracts, and documents;
- (3) All real estate contracts of the brokerage firm and its handling by the associated real estate salesperson;
- (4) The proper handling of any commission application, real estate license application, or renewal application that the principal broker or the brokerage firm expressly agrees to handle on behalf of the applicant, including without limitation, verifying for completeness and appropriate fees, and mailing or delivering the appropriate documents to the commission by the required deadline;
- (5) Developing policies and procedures for the brokerage firm concerning the handling of real estate transactions and the conduct of the associated real estate licensees and other staff, including education and enforcement of the policies and procedures;
- (6) Setting a policy on continuing education requirements for all associated real estate licensees in compliance with the statutory requirement;
- (7) Ensuring that the licenses of all associated real estate licensees and the brokerage firm license are current and active;
- (8) Establishing and maintaining a training program for all associated real estate licensees; and
- (9) Ensuring that all associated real estate licensees are provided information and training on the latest amendments to real estate licensing laws and rules as well as other related laws and rules.

(c) The principal broker may delegate management and supervision duties to one or more brokers in charge subject to the principal broker's written policies and procedures. The principal broker shall be responsible for the education, enforcement, and records required of such policies and procedures.

§467-2 Exceptions. The provisions requiring licensing as a real estate broker or salesperson shall not apply:

- (1) To any individual who, as owner of any real estate or acting under power of attorney from the owner, performs any of the acts enumerated in the definitions of real estate broker and real estate salesperson with reference to the real estate; provided that the term "owner" as used in this paragraph shall not include any individual engaged in the business of real estate development or brokerage or include an individual who acquires any interest in any real estate for the purpose or as a means of evading the licensing requirements of this chapter; and provided

further that the term individual "acting under power of attorney" as used in this paragraph shall not include any individual engaged in the business of real estate development or brokerage or any individual who acts under a power of attorney for the purpose or as a means of evading the licensing requirements of this chapter;

- (2) To any person acting as a receiver, trustee in bankruptcy, personal representative, or trustee acting under any trust agreement, deed of trust, or will, or otherwise acting under any order of authorization of any court;
- (3) To any individual who leases, offers to lease, rents, or offers to rent, any real estate or the improvements thereon of which the individual is the custodian or caretaker;
- (4) To any person who manages, rents, or operates a hotel; or
- (5) To any provider agency owning, leasing, operating, or managing a homeless facility or any other program for the homeless authorized under part ____ of chapter 346.

§467-3 Commission, appointments, qualifications, tenure. There shall be appointed a commission to be known as the real estate commission, to consist of nine members, at least four of whom shall be licensed real estate brokers who have been engaged in business as licensed real estate brokers or salespersons for three years immediately preceding their appointments, each of whom shall be a citizen of the United States and shall have resided in the State for at least three years preceding appointment, and one of whom shall be designated by the appointing power as chairperson. Four members shall be residents of the city and county of Honolulu, one shall be a resident of the county of Hawaii, one shall be a resident of the county of Maui, and one shall be a resident of the county of Kauai and two members shall be public members.

Appointments shall be made for a term of four years, commencing from the date of expiration of the last preceding term and shall be made to expire on June 30. Appointments shall be made so that at least one appointment shall be required each year.

Any vacancy shall be filled by appointment for the unexpired term.

§467-4 Powers and duties of commission. In addition to any other powers and duties authorized by law, the real estate commission shall:

- (1) Grant licenses, registrations, and certificates pursuant to this chapter;
- (2) Adopt, amend, or repeal rules as it may deem proper to effectuate this chapter and carry out its purpose, which is the protection of the general public in its real estate transactions. All rules shall be approved by the governor and the director of commerce and consumer affairs, and when adopted pursuant to chapter 91 shall have the force and effect of law. The rules may forbid acts or practices deemed by the commission to be detrimental to the accomplishment of the purpose of this chapter, and the rules may require real estate brokers and salespersons to complete educational courses or to make reports to the commission containing items of information as will better enable the commission to enforce this chapter and the rules, or as will better enable the commission from time to time to amend the rules

to more fully effect the purpose of this chapter, and, further, the rules may require real estate brokers and salespersons to furnish reports to their clients containing matters of information as the commission deems necessary to promote the purpose of this chapter. This enumeration of specific matters that may properly be made the subject of rules shall not be construed to limit the commission's broad general power to make all rules necessary to fully effectuate the purpose of this chapter;

- (3) Enforce this chapter and rules adopted pursuant thereto;
- (4) Suspend, fine, terminate, or revoke any license, registration, or certificate for any cause prescribed by this chapter, or for any violation of the rules, and may also require additional education or re-examination, and refuse to grant any license, registration, or certificate for any cause that would be a ground for suspension, fine, termination, or revocation of a license, registration, or certificate;
- (5) Report to the governor and the legislature relevant information that shall include but not be limited to a summary of the programs and financial information about the trust funds, including balances and budgets, through the director of commerce and consumer affairs annually, before the convening of each regular session, and at other times and in other manners as the governor or the legislature may require concerning its activities;
- (6) Publish and distribute pamphlets and circulars, produce seminars and workshops, hold meetings in all counties, and require other education regarding any information as is proper to further the accomplishment of the purpose of this chapter;
- (7) Enter into contract or contracts with qualified persons to assist the commission in effectuating the purpose of this chapter; and
- (8) Establish standing committees to assist in effectuating this chapter and carry out its purpose, which shall meet not less often than ten times annually, and shall from time to time meet in each of the counties.

§467-4.5 Continuing education. (a) The commission shall have the authority to:

- (1) Set content and other requirements for continuing education courses, providers, and instructors;
- (2) Determine whether requirements have been met;
- (3) Specify a mandatory core course, courses, or equivalencies for a licensing biennium;
- (4) Determine how many hours of a continuing education course will be credited toward continuing education requirements for real estate licensees;
- (5) Develop its own continuing education courses or approve courses developed by others; and
- (6) Authorize the provision of courses taught by alternative delivery methods with interactive instructional techniques. Interactive instructional techniques may include but are not limited to:
 - (A) The opportunity for immediate exchange with an instructor; and
 - (B) Assessment and remediation through the assistance of computer, electronic, audio, or audiovisual interactive instruction designed to

internally measure and evaluate whether students have mastered stated learning objectives.

- (b) Continuing education providers shall:
 - (1) Certify that instructors have met the commission requirements;
 - (2) Ensure that instructors are competent in the subject matter of the course and are current in their knowledge of the subject matter; and
 - (3) Ensure that the course is based on current information, laws, and rules.
- (c) Continuing education instructors shall ensure that their courses are based on current information, laws, and rules.
- (d) Continuing education courses shall be designed to improve a licensee's competency, or professional standards and practice and shall:
 - (1) Be offered by a provider approved by the commission and either be:
 - (A) Approved by the commission and delivered by an instructor certified by a commission-approved continuing education provider;
 - (B) A national course delivered by an instructor certified by the National Association of Realtors or its affiliates;
 - (C) A national course delivered by an instructor certified by the Building Owners and Managers Association, the Community Associations Institute, or any other national organization approved by the commission; or
 - (D) Certified by the Association of Real Estate License Law Officials;
 - (2) Be designed to allow students to exceed minimal entry level competency in the subject matter of the course including consumer protection in real estate transactions; and
 - (3) Not require an examination.

§467-5 Board's employees. Subject to chapter 76, the department of commerce and consumer affairs may employ and remove such administrative and clerical assistants as the real estate commission requires and prescribe their powers and duties.

§467-6 Place of meeting. The director of commerce and consumer affairs shall provide suitable quarters for meetings of the real estate commission and for the transaction of its other business.

§467-7 Licenses required to act as real estate broker and salesperson. No person within the purview of this chapter shall act as real estate broker or real estate salesperson, or shall advertise, or assume to act as real estate broker or real estate salesperson without a license previously obtained under and in compliance with this chapter and the rules and regulations of the real estate commission.

§467-7.5 License recognition. The commission may enter into a license recognition agreement with another state, or a jurisdiction recognized by the Association of Real Estate

License Law Officials, with an equivalent real estate licensing law as determined by the commission.

§467-8 Prerequisites for license, registration, or certificate. (a) No license, registration, or certificate under this chapter shall be issued to:

- (1) Any individual applying for a real estate broker or salesperson license who does not satisfy the requirements set forth in section 467-9.5;
- (2) Any individual applying for a real estate broker or salesperson license unless the individual has demonstrated by passing with a grade satisfactory to the commission an examination appropriate to the license sought that the individual has a reasonable knowledge of:
 - (A) Estates, interests, and rights in real property;
 - (B) The documents or acts or occurrences by which property is transferred or otherwise affected;
 - (C) The rights and duties of an agent;
 - (D) The laws of the State relating to real estate brokers and salespersons; and
 - (E) Other subjects that the commission determines to be essential for the protection of the general public in its real estate transactions;
- (3) Any person who does not possess a reputation for or record of competency, honesty, truthfulness, financial integrity, and fair dealing;
- (4) Any partnership unless the real estate brokerage business thereof is under the direct management of a principal broker who is a general partner or employee thereof and holds a current active real estate broker's license;
- (5) Any corporation unless the real estate brokerage business thereof is under the direct management of a principal broker who is an officer or employee thereof and holds a current active real estate broker's license;
- (6) Any individual applying for a real estate broker's license who does not have a current Hawaii real estate salesperson's license;
- (7) Any person with a trade name, partnership, limited liability company, or corporation that is not currently registered with the business registration division of the department of commerce and consumer affairs; provided that no real estate salesperson's license shall be approved or issued with a trade name; or
- (8) Any limited liability company unless the real estate brokerage business is under the direct management of a principal broker who is a member of a member-managed limited liability company or a manager of a manager-managed limited liability company or employee and holds a current active real estate broker's license.

(b) Prior to submitting to prelicensing education or examination requirements, an individual candidate may request that the commission consider a preliminary decision as to whether the individual candidate for a real estate license will be denied a real estate license pursuant to section 467-8(a)(3). The individual candidate shall submit a completed application, all information requested by the commission, and the nonrefundable application fee as provided in rules adopted by the director pursuant to chapter 91. The preliminary decision shall provide advisory guidance, shall not be construed as binding, and shall not be subject to appeal. The

individual candidate seeking a preliminary decision shall not be considered an applicant for licensure. A preliminary decision that is unfavorable to the individual shall not prevent the individual from submitting a complete license application and fees after successful completion of the prelicensing requirements.

§467-9 License, registration, certificate, and applications. (a) Every applicant for issuance of a real estate license, registration, or certificate under this chapter shall file an application with the commission in a form and setting forth the information as may be prescribed or required by the commission, and shall furnish any additional information bearing upon the issuance of the license, registration, and certificate as it requires. In the case of a partnership or corporation, any general partner or officer thereof may sign the application on behalf of the applicant. The commission may prescribe deadlines for the submission of applications.

(b) Unless approved by the commission, no real estate broker's license shall be issued under or changed to any trade name, corporate name, or partnership name which contains the name, part of the name, initials, or nickname of:

- (1) An unlicensed person;
- (2) A real estate salesperson; or
- (3) A real estate broker whose real estate license is not associated with or employed by the subject real estate broker applicant.

A real estate broker's license name includes any trade name approved by the commission.

(c) A real estate broker's license shall be placed on an inactive status unless the real estate broker immediately changes its name, trade name, corporate name, or partnership name that contains the name, part of the name, initials, or nickname of:

- (1) A real estate licensee who is no longer associated with or employed by the subject real estate broker, except in the case of incapacitating disability or death of the real estate licensee where written authorization is obtained from the real estate licensee or legal representative of the licensee permitting use of the name; or
- (2) A real estate licensee who is no longer a current active real estate licensee due to revocation, termination, forfeiture, surrender, or inactive status.

The changes shall comply with this chapter and the rules of the commission.

(d) Notwithstanding subsection (b), a real estate broker's license name may include the name of a franchise registered with the business registration division of the department of commerce and consumer affairs.

§467-9.5 Prerequisites for examination. (a) No individual shall be eligible for the licensing examination unless the individual is:

- (1) A United States citizen, a United States national, or an alien authorized to work in the United States, and of the age of majority; and
- (2) Applying for:
 - (A) The real estate salesperson examination and has satisfactorily completed a commission-approved prelicensing course for real estate salesperson candidates, which includes real estate principles, or its equivalent as determined by the commission; or

- (B) The real estate broker examination and:
- (i) Holds a current, unencumbered Hawaii real estate salesperson license or a current, unencumbered real estate salesperson or broker license in another state or in a jurisdiction recognized by the Association of Real Estate License Law Officials, with an equivalent real estate licensing law as determined by the commission;
 - (ii) Has satisfactorily completed a commission-approved preclicensing course for real estate broker candidates, or its equivalent as determined by the commission; and
 - (iii) Has experience as a full-time Hawaii-licensed real estate salesperson associated with a Hawaii-licensed real estate broker for at least three years of the five-year period immediately prior to the submission of the experience certification application and has practical real estate salesperson experience, as certified by the principal broker, principal brokers, broker in charge, or brokers in charge, as the case may be, during the subject period. The candidate shall secure commission approval of the candidate's experience certification application prior to the date of the examination. Subject to commission approval, a candidate may request a determination of equivalency for the experience requirement based on real estate salesperson license experience or a current, unencumbered real estate broker license in another state, or in a jurisdiction recognized by the Association of Real Estate License Law Officials, with an equivalent real estate licensing law as determined by the commission.

(b) Each individual shall certify that the prerequisites set forth in this section have been or will be satisfied prior to the date of examination. The examination score of any individual who has taken the examination without having satisfied the prerequisites set forth in this section prior to the date of examination shall be voided.

§467-9.6 Examination. (a) Every applicant for a real estate examination shall file an application with either the commission or the testing service agency designated by the commission pursuant to rules of the commission to provide the testing service. The application shall be in a form prescribed by the commission and shall include a certification statement that the applicant has fulfilled or will fulfill by the date of the examination, the prerequisites for examination. Every application shall be accompanied by an examination fee as determined by the commission by rules adopted pursuant to chapters 26 and 91. Applicants shall apply for real estate licenses in the manner prescribed by the commission.

(b) The commission may prescribe the passage of a specific section or sections of the examination for different purposes, including the following:

- (1) A current out-of-state licensee requesting an equivalency to the uniform part of the state preclicensing examination based on previously passing the uniform portion of another state's licensing examination or equivalent as determined by the

commission. The approved equivalency will be for the respective examination passed in the other state;

- (2) Equivalency to continuing education requirements as determined by the commission;
- (3) Restoration of forfeited license; and
- (4) Reinstatement of license due to disciplinary action, as determined by the commission;

subject to the contract with the testing service and submission of application and approval prior to application for the examination.

§467-10 Form of licenses, registrations, and certificates. The form of every license, registration, and certificate shall be prescribed by the commission, and shall be issued in the name of the commission.

§467-11 Fees; original license and biennial renewals. (a) All fees for applications, registrations, certificates, and any license prescribed by this chapter shall be deposited to the credit of the compliance resolution fund established pursuant to section 26-9(o), and all fees allocated to the real estate education fund shall be as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91.

(b) The biennial renewal fee and completed renewal application shall be submitted to the department of commerce and consumer affairs on or before the commission-prescribed deadline and prior to the expiration date of the license. All real estate licenses expire on December 31 of an even-numbered year. Failure, neglect, or refusal of any duly licensed real estate broker or real estate salesperson to pay the biennial renewal fee and to submit a completed renewal application shall constitute a forfeiture of the license as of January 1 of the subsequent odd-numbered year.

(c) The forfeited license of an individual real estate broker or real estate salesperson may be restored upon compliance with the licensing renewal requirements provided by law; submission of a complete written application; payment of all applicable renewal fees, penalty fees, compliance resolution fund fees, and, if applicable, recovery fund assessments; satisfaction of the applicable requirements in sections 467-8 and 467-9; submission of written documentation demonstrating compliance with section 467-11.5; and, for individual licensees, satisfaction of one of the following as applicable:

- (1) For a license forfeited for more than one year but less than four years, the successful completion of the commission-approved course or courses or passage of the commission-approved examination; or
- (2) For a license forfeited for more than four years but less than five years, the successful passage of the commission-approved examination.

(d) The license of any individual licensed as a real estate broker or a real estate salesperson who fails to apply for restoration of a forfeited license within five years from the date of forfeiture shall be automatically terminated. Once a license has been terminated pursuant to this section, the individual may apply for a new salesperson license pursuant to and subject to all applicable laws and rules in effect at the time of application.

(e) The license of any real estate broker other than a natural person that fails to apply for restoration of a forfeited license within one year from the date of forfeiture, shall be automatically terminated. Once a license has been terminated pursuant to this section, the entity may apply for a new license pursuant to and subject to all applicable laws and rules in effect at the time of application.

(f) A real estate broker or real estate salesperson may place that person's license on an inactive status by filing an application and setting forth information prescribed or required by the commission; the license shall be renewed on or before the commission-prescribed deadline prior to the expiration date of the license by payment of the biennial renewal fee and submission of a completed renewal application. A real estate broker or real estate salesperson may reactivate that person's inactive license by satisfying section 467-11.5, filing an application setting forth any information as may be prescribed or required by the commission, and paying the proper fee.

(g) The commission may refund any fee erroneously paid to it under this section when the commission deems it just and equitable.

(h) If beginning on July 1, 1987, the education fund balance at the end of any fiscal biennium exceeds \$1,200,000, there shall be a moratorium on renewal contributions and the commission shall review and consider a reduction in the amount of licensee fees.

§467-11.5 Prerequisites for license renewal. *[Repeal on July 1, 1995, by L 1987, c 95 §3 deleted by L 1995, c 241, §11.]* (a) Prior to the license renewal of a real estate broker or real estate salesperson, the licensee shall provide the commission with proof of having attended at least twenty hours of continuing education or its equivalent as determined by the commission during the two-year period preceding the application for renewal. Failure to satisfy the continuing education requirement by the license expiration date shall result in the renewed license being automatically placed on an "inactive" status.

(b) To reactivate a license which has been placed on an "inactive" status, the licensee shall submit to the commission proof of having satisfied the continuing education requirement of this section, a complete application setting forth the information as may be prescribed or required by the commission, and payment of the proper fee.

(c) No license shall be renewed if the license trade name, partnership, or corporation is not currently registered with the department of commerce and consumer affairs.

(d) Upon submission of a renewal application, an individual real estate licensee, who holds a current, unencumbered real estate license in another state, or who holds a current, unencumbered real estate license in a jurisdiction recognized by the Association of Real Estate License Law Officials, with an equivalent real estate licensing law as determined by the commission, may request a determination of equivalency for the elective course hours of the continuing education requirement. The equivalency shall be based on the successful completion of the continuing education requirements in the other state or jurisdiction prior to submission of the renewal application. Approval of the equivalency shall be subject to the real estate licensee completing the commission-designated core course, as determined by the commission.

§467-12 Place of business and posting of license. (a) A licensed real estate broker shall have and maintain a definite place of business in the State, in compliance with this chapter and

the rules of the commission, and shall display therein the real estate broker's license and upon request make available any associating real estate salesperson's license.

(b) No real estate broker's branch office shall operate without a registration previously obtained under and in compliance with this chapter and the rules of the commission.

§467-13 Delivery of agreement. When a licensee prepares or has prepared an agreement authorizing the licensee to perform any of the acts for which the licensee is required to hold a license, or when such licensee secures the signature of any party or parties to any contract pertaining to such services or transaction, the licensee shall deliver a copy of the agreement or contract to the party or parties signing it, at the time the signature is obtained; provided that only one copy need be delivered to parties signing as cotenants.

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

- (1) Making any misrepresentation concerning any real estate transaction;
- (2) Making any false promises concerning any real estate transaction of a character likely to mislead another;
- (3) Pursuing a continued and flagrant course of misrepresentation, or making of false promises through advertising or otherwise;
- (4) Without first having obtained the written consent to do so of both parties involved in any real estate transaction, acting for both the parties in connection with the transaction, or collecting or attempting to collect commissions or other compensation for the licensee's services from both of the parties;
- (5) When the licensee, being a real estate salesperson, accepts any commission or other compensation for the performance of any of the acts enumerated in the definition set forth in section 467-1 of real estate salesperson from any person other than the real estate salesperson's employer or the real estate broker with whom the real estate salesperson associates or, being a real estate broker or salesperson, compensates one not licensed under this chapter to perform any such act;
- (6) When the licensee, being a real estate salesperson, acts or attempts to act as a real estate broker or represents, or attempts to represent, any real estate broker other than the real estate salesperson's employer or the real estate broker with whom the real estate salesperson is associated;
- (7) Failing, within a reasonable time, to account for any moneys belonging to others that may be in the possession or under the control of the licensee;
- (8) Any other conduct constituting fraudulent or dishonest dealings;
- (9) When the licensee, being a partnership, permits any member of the partnership who does not hold a real estate broker's license to actively participate in the real

- estate brokerage business thereof or permits any employee thereof who does not hold a real estate salesperson's license to act as a real estate salesperson therefor;
- (10) When the licensee, being a corporation, permits any officer or employee of the corporation who does not hold a real estate broker's license to have the direct management of the real estate brokerage business thereof or permits any officer or employee thereof who does not hold a real estate salesperson's license to act as a real estate salesperson therefor;
 - (11) When the licensee, being a real estate salesperson, fails to file with the commission a written statement setting forth the name of the real estate broker by whom the licensee is employed or with whom the licensee is associated;
 - (12) When the licensee fails to obtain on the contract between the parties to the real estate transaction confirmation of who the real estate broker represents;
 - (13) Violating this chapter; chapters 484, 514A, 514B, 514E, or 515; section 516-71; or the rules adopted pursuant thereto;
 - (14) Splitting fees with or otherwise compensating others not licensed hereunder for referring business; provided that notwithstanding paragraph (5), a real estate broker may pay a commission to:
 - (A) A licensed real estate broker of another state, territory, or possession of the United States if that real estate broker does not conduct in this State any of the negotiations for which a commission is paid;
 - (B) A real estate broker lawfully engaged in real estate brokerage activity under the laws of a foreign country if that real estate broker does not conduct in this State any of the negotiations for which a commission is paid; or
 - (C) A travel agency that in the course of business as a travel agency or sales representative, arranges for compensation the rental of a transient vacation rental; provided that for purposes of this paragraph "travel agency" means any person that, for compensation or other consideration, acts or attempts to act as an intermediary between a person seeking to purchase travel services and any person seeking to sell travel services, including an air or ocean carrier;
 - (15) Commingling the money or other property of the licensee's principal with the licensee's own;
 - (16) Converting other people's moneys to the licensee's own use;
 - (17) The licensee is adjudicated insane or incompetent;
 - (18) Failing to ascertain and disclose all material facts concerning every property for which the licensee accepts the agency, so that the licensee may fulfill the licensee's obligation to avoid error, misrepresentation, or concealment of material facts; provided that for the purposes of this paragraph, the fact that an occupant has AIDS or AIDS Related Complex (ARC) or has been tested for HIV (human immunodeficiency virus) infection shall not be considered a material fact;
 - (19) When the licensee obtains or causes to be obtained, directly or indirectly, any licensing examination or licensing examination question for the purpose of disseminating the information to future takers of the examination for the benefit or gain of the licensee;

- (20) Failure to maintain a reputation for or record of competency, honesty, truthfulness, financial integrity, and fair dealing; or
- (21) Acquiring an ownership interest, directly or indirectly, or by means of a subsidiary or affiliate, in any distressed property that is listed with the licensee or within three hundred sixty-five days after the licensee's listing agreement for the distressed property has expired or is terminated.

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

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

§467-15 Hearings. In every case where it is proposed to revoke or suspend the exercise of any license, fine any person holding a license, registration, or certificate, terminate any registration or certificate, or take any other action authorized by law, for any of the causes enumerated in section 467-14, the person concerned shall be given notice and hearing in conformity with chapter 91.

In all proceedings before it, the commission and each member thereof shall have the same powers respecting administering oaths, compelling the attendance of witnesses and the production of documentary evidence, and examining witnesses, as are possessed by circuit courts. In cases of disobedience by any person of any order of the commission, or any member thereof, or of any subpoena issued by it, or the member, or the refusal of any witness to testify to any matter to which the witness may be questioned lawfully, any circuit judge, on application by the commission, or a member thereof, shall compel obedience as in the case of disobedience of the requirements of a subpoena issued by a circuit court, or a refusal to testify therein.

§467-15.5 License issued after a revocation or automatic termination. A person whose license has been revoked, or automatically terminated in accordance with section 467-18(e), may apply for a license as a new applicant after the revocation or termination period and, if applicable, after repayment to the real estate recovery fund and compliance with all the terms of the commission's final order. Any person who was previously licensed as a real estate broker shall apply as a real estate salesperson. Any person who was previously licensed as a real estate salesperson shall apply as a real estate salesperson. A new applicant refused licensure as a real estate broker pursuant to this section shall not be entitled to a hearing on that refusal.

§467-16 Real estate recovery fund; use of fund; fees. (a) The commission shall establish and maintain a trust fund which shall be known as the real estate recovery fund from which any person aggrieved by an act, representation, transaction, or conduct of a duly licensed real estate broker, or real estate salesperson, upon the grounds of fraud, misrepresentation, or deceit, may recover upon the commission's settlement of a claim or by order of the circuit court or district court of the county where the violation occurred, an amount of not more than \$25,000 per transaction for damages sustained by the fraud, misrepresentation, or deceit, including court costs and fees as set by law, and reasonable attorney fees as determined by the court.

(b) When any person makes application for an original license to practice as a real estate broker or salesperson the person shall pay, in addition to the person's original license fee, a real estate recovery fund fee as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91 for deposit in the real estate recovery fund. If the commission does not issue the license, this fee shall be returned to the applicant.

(c) The commission, as the trustee of the real estate recovery fund, shall be authorized to expend the funds to:

- (1) Retain private legal counsel to represent the commission in any action involving or which may result in payment from the real estate recovery fund;
- (2) Retain a certified public accountant for accounting and auditing of the real estate recovery fund;
- (3) Employ necessary personnel, not subject to chapter 76, to assist the commission in exercising its powers and duties with respect to the real estate recovery fund; and
- (4) Retain a consultant to recover and collect any payments from the real estate recovery fund plus interest from the judgment debtor.

§467-17 Additional payments to fund. (a) If the balance remaining in the real estate recovery fund is less than \$350,000, the department of commerce and consumer affairs shall assess every real estate licensee an additional payment to the recovery fund as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91 for deposit in the real estate recovery fund.

(b) The failure of the licensee to pay the assessment within sixty days from the date of assessment shall constitute a forfeiture of the license. The commission may impose other penalties or requirements as a condition to restoration of the license.

§467-18 Statute of limitation; recovery from fund. (a) No action for a judgment that subsequently results in an order for collection from the real estate recovery fund shall be started later than two years from the accrual of the cause of action thereon. When any aggrieved person commences action for a judgment that may result in collection from the real estate recovery fund, the aggrieved person shall notify the commission in writing to this effect at the time of the commencement of the action and shall submit prescribed documents. The commission may intervene in and defend any such action.

(b) When any aggrieved person recovers a valid judgment in any circuit or district court where the violation occurred against any real estate broker, or real estate salesperson, upon the grounds of fraud, misrepresentation, or deceit, which occurred on or after January 1, 1968, the aggrieved person may, upon the termination of all proceedings, including reviews and appeals in connection with the judgment, file a verified claim in the court in which the judgment was entered and, upon ten days written notice to the commission, may apply to the court for an order directing payment out of the real estate recovery fund, of the amount unpaid upon the judgment, subject to the limitations stated in this section. For any cause of action occurring prior to January 1, 1968, the aggrieved person must proceed against the existing bond covering the license which was in force prior to the establishment of the real estate recovery fund.

(c) The court shall proceed upon the application in a summary manner and, upon the hearing thereof, the aggrieved person shall be required to show:

- (1) The person is not a spouse of debtor, or the personal representative of such spouse;
- (2) The person has complied with all the requirements of this section;
- (3) The person has obtained a judgment as set out in subsection (b) of this section, stating the amount thereof and the amount owing thereon at the date of the application;
- (4) The person has made all reasonable searches and inquiries to ascertain whether the judgment debtor is possessed of real or personal property or other assets, liable to be sold or applied in satisfaction of the judgment;
- (5) That by such search the person has discovered no personal or real property or other assets liable to be sold or applied, or that the person has discovered certain of them, describing them, owned by the judgment debtor and liable to be so applied, and that the person has taken all necessary action and proceedings for the realization thereof, and that the amount thereby realized was insufficient to satisfy the judgment, stating the amount so realized and the balance remaining due on the judgment after application of the amount realized; and
- (6) That where the real estate broker or real estate salesperson is a debtor in a bankruptcy proceeding, the aggrieved person has obtained an order from the bankruptcy court declaring the judgment against the real estate broker or real estate salesperson to be non-dischargeable.

(d) The court shall make an order directed to the commission requiring payment from the real estate recovery fund of whatever sum it finds to be payable upon the claim, pursuant to and in accordance with the limitations contained in this section, if the court is satisfied, upon the hearing, of the truth of all matters required to be shown by the aggrieved person by subsection (c) of this section and that the aggrieved person has fully pursued and exhausted all remedies available to the person for recovering the amount awarded by the judgment of the court.

(e) Should the commission pay from the real estate recovery fund any amount in settlement of a claim or toward satisfaction of a judgment against a licensed real estate broker or real estate salesperson, the license of the real estate broker or real estate salesperson shall be automatically terminated upon the issuance of a court order authorizing payment from the real estate recovery fund. No real estate broker or real estate salesperson shall be eligible to receive a new license until the expiration of at least five years from the effective date of the termination of the license and until the terminated real estate broker or real estate salesperson has repaid in full, plus interest at the rate provided for in section 478-3, the amount paid from the real estate recovery fund on the terminated real estate broker's or real estate salesperson's account.

(f) If, at any time, the money deposited in the real estate recovery fund is insufficient to satisfy any duly authorized claim or portion thereof, the commission, shall, when sufficient money has been deposited in the real estate recovery fund, satisfy such unpaid claims or portions thereof, in the order that such claims or portions thereof were originally filed, plus accumulated interest at the rate of six per cent a year.

§467-19 Management of fund. (a) The sums received by the real estate commission for deposit in the real estate recovery fund shall be held by the commission in trust for carrying out the purpose of the real estate recovery fund. The real estate commission, as the trustee of the recovery fund, shall be authorized to expend the funds to retain private legal counsel to represent the commission in any action involving the real estate recovery fund. These funds may be invested and reinvested in the same manner as funds of the state employees retirement system, and the interest from these investments shall be deposited to the credit of the real estate education fund, and which shall be available to the commission for educational purposes, which is hereby created. The real estate commission, as trustee of the real estate education fund, may invest and reinvest the real estate education fund in the same manner as funds of the state employees retirement system. The commission for investment purposes, may combine the real estate education and recovery funds and invest and reinvest the combined funds in the same manner as funds of the state employees retirement system. The commission shall keep separate accounting records for the two funds.

(b) Educational purposes as used in subsection (a) shall include those purposes to promote the advancement of education and research in the field of real estate for the benefit of the public and those licensed under the provisions of this chapter and the improvement and more efficient administration of the real estate industry. The commission, in its discretion, may use any and all moneys in the real estate education fund consistent with the above. The commission and the director of commerce and consumer affairs may also use moneys in the education fund to employ necessary personnel, not subject to chapter 76, to fully effectuate subsection (b) and carry out its purpose.

§467-20 False statement. It shall be unlawful for any person or the person's agent to testify before or file with the commission, or the testing service agency designated by the commission, any notice, statement, or other document required under this chapter, that is false or untrue or contains any material misstatement of fact, or contains forgery. In addition to any sanctions or remedies as provided in this chapter, any violation of this section shall constitute a misdemeanor punishable pursuant to section 706-640 or 706-663, or both, and not pursuant to section 467-26.

§467-21 The real estate commission has standing in court. When the real estate commission receives notice, as provided in section 467-18(a), the commission may enter an appearance, file an answer, appear at the court hearing, defend the action, or take whatever other action it deems appropriate on behalf and in the name of the defendant, and take recourse through any appropriate method of review on behalf of, and in the name of, the defendant. The commission or its legal representative shall be served with all pleadings in an action which may result in a recovery from the real estate recovery fund.

Settlement of any claim against the real estate recovery fund may be made only with the agreement of a majority of the commission that settlement is in the best interest of the real estate recovery fund.

§467-22 Subrogation of rights. When, upon the order of the court, or upon the commission's settlement of a claim, the real estate commission has paid from the real estate recovery fund any sum to the judgment creditor, the commission shall be subrogated to all of the rights of the judgment creditor and the judgment creditor shall assign all the creditor's right, title, and interest in the judgment or settlement to the commission and any amount and interest so recovered by the commission on the judgment or settlement shall be deposited to the fund.

§467-23 Waiver of rights. The failure of an aggrieved person to comply with this chapter relating to the real estate recovery fund shall constitute a waiver of any rights hereunder.

§467-24 Maximum liability. Notwithstanding any other provision, the liability of the real estate recovery fund shall not exceed \$50,000 for any one licensee.

§467-25 Disciplinary action against licensee. Nothing contained herein shall limit the authority of the real estate commission to take disciplinary action against any licensee for a violation of this chapter, or the rules and regulations of the commission; nor shall the repayment in full of all obligations to the real estate recovery fund by any licensee nullify or modify the effect of any other disciplinary proceeding brought pursuant to this chapter.

§467-25.5 Registration of schools, instructors; fees. (a) Schools. Any person may apply to the real estate commission for a certificate of registration as a real estate school upon the payment to the department of commerce and consumer affairs of an initial registration fee and thereafter a biennial registration fee. No school shall be granted a certificate of registration unless it maintains a sufficient number of registered instructors, requires a course of training of not less than that required by section 467-8, and meets other requirements as provided in rules adopted by the commission.

(b) Instructors. The commission shall issue a certificate of registration as instructor to any person who meets its requirements and pays the proper fee.

(c) The fees, including a nonrefundable processing fee, for a certificate of registration and renewal thereof for schools and instructors shall be as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91.

(d) Examination fee for instructors requesting to be certified if and when required shall be as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91.

(e) In the event a certificate of registration is forfeited, the certificate of registration may be reinstated upon payment of the renewal fee that is immediately due and owing, past due renewal fees, and penalty fees as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91.

(f) The commission shall adopt rules it deems proper to fully effectuate this section. The adoption of rules shall include, but not be limited to:

- (1) Requirements for registration as a real estate school and as an instructor;

- (2) Requirements for a certificate of registration renewal for a real estate school and an instructor; and
- (3) Reinstatement requirements for a forfeited certificate of registration for a real estate school and an instructor.

(g) The biennial renewal fee shall be paid to the department of commerce and consumer affairs on or before December 31 of every even-numbered year. Failure, neglect, or refusal of a holder of any duly issued certificate of registration to pay the biennial renewal fee shall constitute a forfeiture of the certificate of registration. The certificate of registration may be reinstated upon written application therefor, payment to the department of the sum specified in subsection (e), and satisfaction of other requirements for reinstatement of a certificate of registration as provided in rules adopted by the commission.

§467-26 Penalty. Any person violating this chapter shall be fined not more than \$5,000 for each violation.

§467-30 Registration, bonding, and other requirements for condominium hotel operators. (a) As used in this section, "condominium hotel" includes those apartments or units in a project as defined in section 514A-3 or 514B-3 and subject to chapter 514A or 514B, which are used to provide transient lodging for periods of less than thirty days.

(b) All condominium hotel operators shall register with the commission as a sole proprietor, partnership, limited liability company, or corporation and shall:

- (1) Register by submitting a completed commission application form with the commission requested information, receive commission approval prior to conducting condominium hotel activity, and re-register on or before the commission prescribed deadline prior to the registration expiration date. The registration and re-registration shall expire on December 31 of an even-numbered year. Registration information shall include but not be limited to the number of apartments or units managed for others as well as the number of apartments or units owned by the condominium hotel operator. Any operator failing to register with the commission shall be subject to a fine not exceeding an amount equal to \$25 multiplied by the aggregate number of apartments or units being utilized as a condominium hotel. Each month or fraction of a month of noncompliance shall be deemed a new and separate violation;
- (2) Obtain and keep current a fidelity bond from an insurance company authorized to issue fidelity bonds by the insurance division of the department of commerce and consumer affairs. The fidelity bond shall be in an amount equal to \$500 multiplied by the aggregate number of apartments or units in the condominium hotel operation; provided that the minimum amount of the fidelity bond required by this paragraph shall not be less than \$20,000 nor greater than \$100,000. The aggregate number of apartments or units excludes the number of apartments or units owned by the condominium hotel operator either as a sole proprietor, partnership, limited liability company, or corporation or those apartments or units included in a registered time share plan managed by a registered time share plan

manager. The fidelity bond shall cover all of the condominium hotel operator's employees handling or having custody and control of either the condominium hotel operator's or the apartment or unit owner's funds, or both. Upon request by the commission, the condominium hotel operator shall provide evidence of a current fidelity bond or a certification statement from an insurance representative of an insurance company authorized by the insurance division of the department of commerce and consumer affairs certifying that the fidelity bond is in effect and meets the requirements of this section and the rules adopted by the commission. The commission may adopt rules establishing conditions and terms by which it may grant a bond alternative or permit deductibles. No condominium hotel operator shall be exempt from the fidelity bond requirement; and

- (3) Pay an application fee and an initial registration or a re-registration fee as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91, which fees shall be deposited with the director of commerce and consumer affairs to the credit of the compliance resolution fund established pursuant to section 26-9(o);

provided that this section shall not apply to persons who are subject to section 467-2.

(c) In the course of operating a condominium hotel, neither a real estate broker license nor a real estate salesperson license shall be required of those employees of a condominium hotel operator who only perform or facilitate the delivery of customary hotel services.

(d) All employees handling or having custody or control of the funds received by the condominium hotel operator shall be covered by a fidelity bond. The fidelity bond shall protect the condominium hotel operator against fraudulent or dishonest acts by the employees of the condominium hotel operator.

(e) As used in this section, "operating a condominium hotel" includes the management of the apartments or units in a condominium project for purposes of providing transient lodging, and includes the renting or leasing of condominium apartments or units directly or indirectly from the apartment or unit owners for purposes of providing transient lodging. The condominium hotel operator shall provide a written contract to the owner or owners of each apartment or unit under the condominium hotel operation, expressing the exact agreements of each party including all financial and accounting obligations, and the notification requirements of subsection (g).

(f) A condominium hotel operator shall operate in condominium projects specifically authorized for transient lodgings by county zoning and regulations and specifically permitted by the condominium project's declaration and bylaws.

- (g) The registered condominium hotel operator:
 - (1) Shall not provide or offer lodgings thirty days or longer;
 - (2) Shall not be licensed as real estate broker or a real estate salesperson;
 - (3) Shall not conduct any other activities contained in the definition of the term "real estate broker";
 - (4) Shall appoint an employee or principal to have direct management and responsibility over condominium hotel operations; and

(5) Shall provide evidence of written notification to all representing apartment or unit owners of the provisions of this section including the nonapplicability of the real estate recovery fund.

(h) Any condominium hotel operator aggrieved by the fraudulent or dishonest acts of an employee shall act promptly and diligently to recover from the fidelity bond required by this section. The condominium hotel operator shall apply all proceeds received from the fidelity bond against all losses incurred by apartment or unit owners due to fraudulent or dishonest acts by employees. If more than one apartment or unit owner suffers a loss, the condominium hotel operator shall divide the proceeds among the owners in proportion to each owner's loss.

(i) All persons handling or having custody and control of either the condominium hotel operator's or the apartment or unit owner's funds shall be either employees of the condominium hotel operator or principals of the condominium hotel operator.

(j) The registration and fidelity bond requirements of this section shall not apply to active real estate brokers, in compliance with and licensed under this chapter, conducting condominium hotel activity.

§467-31 REPEALED.