

OVERVIEW

THE AUDITOR
STATE OF HAWAII

Evaluation of the Continuing Education Program for Real Estate Brokers and Salespersons

Summary

The mandatory continuing education program for real estate brokers and salespersons under Section 467-11.5, Hawaii Revised Statutes is scheduled for repeal on July 1, 1995. The Legislature directed us to assess whether the program has improved protection of the public in real estate transactions, whether the program should be established pursuant to statute, and whether any improvements are needed. We conclude that the continuing education requirement should be repealed. If the program is continued, improvements should be made.

The law requires that real estate brokers and salespersons complete ten hours of continuing education every two years as a condition of license renewal. The Legislature's intent was to protect the public in their real estate transactions by helping to ensure the competency of licensees.

The Real Estate Commission implements the continuing education program with administrative support from the Department of Commerce and Consumer Affairs (DCCA). The commission's current program consists of three courses of 3 and 1/3 hours each. Licensees must take one core course, Law and Ethics, and choose two electives from a list approved by the commission.

We found that mandatory continuing education for real estate agents is unwarranted. Evidence that it has resulted in better consumer protection is insufficient. The general concept of using mandatory continuing education to protect consumers is questionable. Little evidence exists nationally that mandatory continuing education ensures competence and learning. Continuing education is required for only nine of the forty-five occupational regulatory programs in DCCA. Furthermore, a cause and effect relationship between continuing education and data on complaints against real estate agents cannot be demonstrated. The State should not use its regulatory powers to establish a mandatory continuing education program simply to make sure that real estate agents keep up-to-date on applicable laws.

We also found that implementation of the continuing education program is flawed in several respects. The commission's program of courses exceeds appropriate use of the State's police powers to ensure that practitioners meet

a minimal standard of competence necessary to protect the health, safety, and welfare of consumers. Under the commission's rules, courses are developed for a difficulty level beyond entry into the occupation and must be at least 60 percent beyond minimal competency level. We also found that the real estate industry, not the consumer, is the main beneficiary of the program. Requirements imposed on course providers and instructors are so burdensome that they appear to restrict free competition.

Recommendations and Response

We recommend that the Legislature consider allowing the scheduled repeal of Section 467-11.5, HRS on July 1, 1995 to end the requirement of continuing education for real estate brokers and salespersons. If the program is not repealed, we recommend that the Legislature consider amending Section 467-11.5 to require that mandatory continuing education be limited to mandatory courses designed to ensure that licensees maintain a minimally acceptable level of competency. The Real Estate Commission should identify the minimal competencies that need to be maintained through its continuing education program before adding elective courses. The commission should also amend its rules to remove burdensome and restrictive requirements for course providers and instructors.

The commission questions our findings. Among other things, it believes the data on complaints indicate that the mandatory continuing education program has protected consumers. The commission also believes that it is appropriate to have courses beyond the minimal competency level. The DCCA concurs with the commission saying that no convincing evidence exists that continuing education does not benefit consumers. We disagree. The Sunset Law says that regulation is to be undertaken *only* when necessary to protect consumers. It does not say that regulation shall be undertaken unless evidence shows consumers are not benefited.

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