
Sunrise Analysis of Rental Referral Agents

A Report to the
Governor
and the
Legislature of
the State of
Hawaii

Submitted by

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Foreword

Hawaii's Sunset Law, or the Hawaii Regulatory Licensing Reform Act of 1977, directs the auditor to analyze proposals to begin regulating a profession or vocation.

As requested by House Concurrent Resolution No. 164, H.D. 1, S.D. 1 (1990), this report examines whether rental referral agents should be regulated. It presents our findings as to whether, under the policies in the Sunset Law, there is a reasonable need to regulate these agents to protect the health, safety, and welfare of the public.

We acknowledge the cooperation and assistance of the Department of Commerce and Consumer Affairs, its Office of Consumer Protection, and the other state officials and industry members contacted during the course of our analysis.

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Chapter 1

Introduction

The Sunset Law, or the Hawaii Regulatory Licensing Reform Act (Chapter 26H, *Hawaii Revised Statutes*), directs the auditor to analyze legislation that proposes to regulate an occupation and to determine whether such regulation is necessary to protect the health, safety, and welfare of consumers.

This report evaluates the necessity of regulating rental referral agents and rent finders under the policies in the Sunset Law. (Hereafter, the term “rental referral agents” refers to both rental referral agents and rent finders.) The 1990 Legislature, in House Concurrent Resolution No. 164, H.D.1, S.D.1, made the request, expressing concern that the State lacked regulatory authority to respond to complaints made by landlords and prospective renters against these agents.

Rental Referral Agencies and Their Regulation

Rental referral agencies are clearinghouses for rental listings. They tend to thrive in tight rental markets in city and suburban areas. For a fee, these agencies offer prospective renters access to lists of rental units, sometimes pre-screening the lists to match the consumer’s needs. Landlords who list units pay no fee.

Little information is available about the activities of these agencies nationwide. No organized trade or professional group appears to represent their interests. In our survey of regulation, 15 of the 34 responding states knew of rental referral agencies operating in their states.

Only a few states regulate rental referral agents or require them to have a real estate license. Nine states and the District of Columbia regulate these agencies as separate businesses. Another 15 states do not regulate them separately but require them to have a real estate license. Regulation was prompted by consumer complaints that included false and misleading advertising, out-of-date listings, inability to obtain promised additional listings, failure to divulge refund policies, and refusal to make refunds.

States may regulate these businesses as rental referral agencies, prepaid rental listing services, apartment listing services, apartment information vendors, or rental location agents. Regulatory controls vary as well. They include combinations of

licensing or registration, bonding, verification of listings, restrictions on advance fees, and prescribed refund policies, among others.

Agencies in Hawaii

We identified four commercial rental referral agencies in the state--three companies in Honolulu (one with a branch office on Maui) and a company in Kailua-Kona. The Army also operates a free interservice referral office to help military personnel find off-base housing.

The commercial agencies vary in organization, type and length of service, and fees. They range from small, owner-operated concerns to a Hawaii franchise of a company with franchises in other states and countries. The main service these agencies supply is information about rentals collected from real estate agents and landlords. Three companies also obtain new listings from the newspaper. One company makes a list of rentals available for customers to view in the office or take home. The others say they do not "sell" a list, but first screen their customers and then provide them with listings selected to suit their needs. Two of the four companies arrange appointments with landlords; the others leave this to the customer. One company will run a credit check at the landlord's request.

Each company collects basic information from its customers: for example, the desired size and type of unit, price range, location, furnishings, and amenities. Two of the smaller companies request financial information such as current salary or bank references, and two ask for personal or business references. Each company offers a telephone service which customers can call for listings. Fees charged to customers for these services range from \$40 to \$60 depending upon the company and the type of rental wanted. Customers pay the fee in advance in order to receive listings good for two months or for an unspecified period of time, depending on the company.

The Army's housing referral office, based at Fort Shafter, serves members of the armed forces on Oahu and personnel of the Department of Defense, both active and retired. The office makes lists of rentals available at branch offices on all military bases. Each branch can provide a general list of rental units, a list of rentals in a specific geographic area, or a list based on unit type (two bedroom, studio, etc.). The user then contacts the landlord.

Past regulation in Hawaii

Hawaii has never regulated businesses called rental *referral* agencies. However, between 1969 and 1979 the State used to regulate businesses known as rental agencies. Consumer complaints first prompted regulation. In 1968 the Honolulu Board

of Realtors reported that in one year 250 complaints had been received by the Real Estate Commission and the Better Business Bureau. According to the attorney general's office, the victims were mainly newcomers and military service personnel.

The language of the 1969 statute, Chapter 467A, suggests that rental agencies provided the same service as do rental referral agencies today. The statute defined a rental agency as "any person who for compensation or other valuable consideration acts or attempts to act as an intermediary between a person seeking to lease, sublease, or assign a housing accommodation and a person seeking to acquire a lease, sublease or assignment of a housing accommodation." The Department of Regulatory Agencies (now the Department of Commerce and Consumer Affairs) oversaw licensing and enforcement. The law required each rental agency to have a \$5,000 bond and accurate information about its listings. The companies could not charge customers a fee until successfully placing them in a housing accommodation. The statute said that agents were not required to have a real estate broker's or salesperson's license.

The Sunset Law passed in 1977 scheduled the rental agencies statute to sunset on December 31, 1979. As then required by the sunset law, the department in 1978 prepared an impact statement on rental agencies and recommended that regulation be allowed to expire. The department found that only three rental agencies were licensed to operate in Hawaii and that all ten agencies in operation prior to regulation in 1969 had closed after licensing became required. It reported that between 1973 and 1978 it had received only one consumer complaint, that rental agency activity was minimal, and that expenditures for regulation exceeded the income from licensing fees. Consumer complaints, the department said, could be handled by the Office of Consumer Protection. The rental agency statute was repealed when the 1979 Legislature took no action to reenact it.

Existing laws that apply

Complaints against rental referral agencies can be pursued based on laws relating to unfair and deceptive acts and practices. The Office of Consumer Protection receives all complaints against rental referral agencies. The office notifies the company of the complaint, offers the company an opportunity to respond, notifies the complainant of the company's response, and may continue its investigation. In many cases, the companies have responded with a full or partial refund of the fee paid by the complainant. To date, the office has not pursued a complaint against a rental referral agency to trial.

Rental referral agencies are not covered by Hawaii's laws on the licensing of real estate brokers and salespersons. An attorney general's opinion issued in 1967 declared that the compilation and sale of lists of available rentals to prospective tenants did not constitute a "listing" or "offering for rent" under the definition of real estate broker. (The definition of real estate broker has remained essentially the same since 1967.)

Objectives of the Analysis

This analysis sought to determine whether there is a need to regulate rental referral agents to protect the health, safety, and welfare of consumers. Specifically, the objectives were to:

1. Determine the nature, extent, and severity of consumer harm attributable to rental referral activities.
2. Determine the cause of the harm.
3. Determine the type of regulation, if regulation is needed.

Scope and Methodology

To accomplish our objectives, we reviewed the literature on rental referral agencies and their regulation. We examined complaints filed with the Department of Commerce and Consumer Affairs and the Better Business Bureau of Hawaii. We interviewed the director and other officials of the Office of Consumer Protection and the executive secretary and members of the Real Estate Commission. We also consulted with the Department of the Attorney General and the Professional and Vocational Licensing Division of the Department of Commerce and Consumer Affairs. We interviewed the owners of all agencies we identified as involved in rental referral activities in Hawaii and several real estate brokers. We also surveyed all the other states concerning their regulation of rental referral activities.

This analysis focused on rental referral activities in Hawaii between 1985 and 1990. The findings and recommendations deal only with commercial referral agencies. Our work was conducted from May through October 1990 in accordance with generally accepted government auditing standards.

Chapter 2

Findings and Recommendations

We found some evidence of harm to consumers from the activity of rental referral agents. The type and nature of the harm, however, is not enough to justify creating a new program to regulate rental referral agents or regulating their activities under the real estate licensing law.

Summary of Findings

1. Rental referral agents do not pose sufficient harm to consumers' health, safety, and welfare to warrant creating a new regulatory program.
2. The real estate licensing law is not appropriate for regulating rental referral agents.

Little Evidence of Serious Harm

We did not find a lack of competency or a need for greater expertise on the part of rental referral agents (the customary reasons for regulating an occupation) to be a cause of harm. The potential harm to consumers from rental referral agencies is the loss of the \$40 to \$60 advance fee. To the extent that harm occurred, the business practices of certain agencies were the likely cause.

Since January 1985, the Office of Consumer Protection has received 32 complaints against rental referral agents; since January 1987, the Better Business Bureau of Hawaii has received 10 complaints. Between January 1987 and July 1990, the office and the bureau together have averaged less than one complaint a month. Companies that are the subject of complaints have in many cases given full or partial refunds to complainants. Half of the complainants received full refunds. One company refunded fees to three out of every four complainants requesting one.

All but one of the complaints were made by consumers looking for rentals. The majority concerned the quality of the listings. Complainants alleged they were given listings which did not match their needs, were already rented, were also advertised in the newspaper, or were not available. A number of complainants said they were assured by a salesperson that the company had listings to fit their specifications, but that after paying the fee, they were given unsatisfactory listings.

The complaints about listings suggest that consumers' expectations may differ from the service an agency actually provides. A source of confusion may lie in advertising. In one example, the Office of Consumer Protection received a complaint against one referral company advertising "apartments from \$400" per month. The complainant charged that after he purchased the company's service, he found they listed no apartment at that price. In responding to the complaint, the company said that the ad was a general advertisement indicating apartments at \$400 could be found on the rental market, but that the company did not get such properties every day.

A few customers complained that a salesperson had made incorrect statements about the company's refund policy. Indeed, we found that two of the four rental referral companies did not clearly or completely state their refund policy on their contracts.

Several complaints were made against one referral service which has since gone out of business. The company apparently left its offices vacant and its rent in arrears in September of 1989. The company replied to only one of seven complaints and granted no refunds.

The resolution requesting this study said landlords had complained of paying rental referral agents who had then not listed their properties. We found no evidence that rental referral agents are paid by landlords to list their properties. Between January 1985 and July 1990, the Office of Consumer Protection and the bureau received only one complaint from a landlord. The complainant was an owner who claimed to have asked repeatedly that her unit be removed from one rental referral company's listings. No other complaints from landlords or owners were reported.

Little Basis for Regulation Under Real Estate Licensing Law

For several reasons, rental referral agents should not be licensed under Hawaii's real estate licensing laws. We found little evidence that those holding real estate licenses engage in rental referral activities. Although the real estate laws do not prohibit such activities, our interviews indicate that real estate licensees do not as a rule sell listings to consumers. When they do, they operate differently from rental referral agents. Brokers and salespersons who handle rentals usually manage the rental for owners for a fee or they may collect a commission or a fee from prospective renters after placing them in a unit. As a general practice, brokers refer clients they cannot help to other brokers or companies free of charge.

A 1967 attorney general's opinion said that the statutory definition of a real estate broker did not include the selling of lists of available real estate rentals. A circuit court in Oregon and the court of appeals in North Carolina ruled unconstitutional the requirement that rental referral agents have a real estate brokers license. Among other aspects, the Oregon court ruled that rental referral agents did not need special skills or competence. Similarly, the North Carolina court ruled that referral agents did not need the expertise required of a real estate broker.

Conclusion

The purpose of occupational regulation is to protect the consumer by establishing minimum standards for practice. Unless there is a preponderance of evidence showing that consumers are disadvantaged or harmed by unregulated practice, licensure is unwarranted. Such evidence was not apparent in our examination.

We did find evidence that rental referral agents have caused some harm. This harm, however, was not due to lack of competence or expertise, which are the customary reasons for regulation. Thus, a separate regulatory program for rental referral agents should not be established. Most other states do not regulate rental referral agents. We found also that the activities of rental referral agents are not appropriate for regulation under the real estate licensing law, because they are essentially different from the activities of real estate licensees.

Complaints against rental referral agents can be investigated by the Office of Consumer Protection and prosecuted under the unfair and deceptive practices act, as is the case in several other states. In many cases, these investigations have resulted in refunds to consumers.

Recommendations

Rental referral agents need not be regulated under the Sunset Law, nor should their activities be regulated under the real estate statutes.