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DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
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PRESENTATION OF
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
REGULATED INDUSTRIES COMPLAINTS OFFICE

TO THE HOUSE COMMITTEE ON
TOURISM

TWENTY-SIXTH STATE LEGISLATURE
REGULAR SESSION, 2012

MONDAY, JANUARY 30, 2012
10:00 A.M.

TESTIMONY ON HOUSE BILL NO. 1707
RELATING TO TRANSIENT ACCOMMODATIONS

TO THE HONORABLE TOM BROWER, CHAIR,
AND TO THE HONORABLE JAMES KUNANE TOKIOKA, VICE CHAIR,
AND MEMBERS OF THE COMMITTEE:

The Regulated Industries Complaints Office ("RICO") of the Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify on House Bill No. 1707, Relating To Transient Accommodations. My name is Jo Ann Uchida, RICO's Complaints and Enforcement Officer.

House Bill 1707 requires nonresident owners of single family dwellings, apartments, condominiums, or townhouses who rent their property as a transient

accommodation for 30 days or less to rent the property through a licensed real estate broker or salesperson.

While RICO generally supports strong enforcement efforts, it does not support this bill in its current form and offers the following comments:

1. If the purpose of the bill is to ensure that transient accommodation guests have a local property manager for contact purposes, RICO suggests that the bill require the licensee to provide local contact information and be available in person to assist the guest.

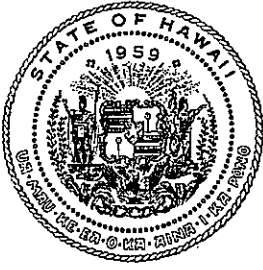
2. Although many owners of transient accommodations operate in compliance with applicable county laws, it is no secret that there are a sizeable number of owners that do not. If owners of illegal vacation rentals hire licensed real estate salespersons or brokers to assist them, those licensees run the risk of committing a licensing violation because they cannot engage in conduct that violates laws. This bill would create a quandary for both owners and licensees.

3. RICO is aware, anecdotally, that there are owners of illegal vacation rentals that pay taxes. If the bill is designed to facilitate the collection of taxes, the practical effect of requiring the participation of a licensed real estate salesperson or broker may be that it will be more difficult for these owners to pay taxes because licensed property managers may be reluctant to engage in conduct that violates licensing laws.

4. RICO's enforcement jurisdiction is limited to cases involving license violations and unlicensed activity. To the extent the bill places requirements on nonresident property owners who are not licensees and establishes fines for noncompliance, RICO suggests that the mechanism to enforce this section be clarified.

5. If the Committee is inclined to adopt this measure, RICO suggests that conforming revisions be made to the language of section 467-2(1), Hawaii Revised Statutes. This section authorizes owners to engage in real estate activity relating to their own property. RICO also suggests that the term "non-resident" be defined.

Thank you for this opportunity to testify on House Bill No. 1707. I will be happy to answer any questions that the members of the Committee may have.



NEIL ABERCROMBIE
Governor

MIKE MCCARTNEY
President and
Chief Executive Officer

Hawai'i Tourism Authority

Hawai'i Convention Center, 1801 Kalākaua Avenue, Honolulu, Hawai'i 96815
Website: www.hawaiitourismauthority.org

Telephone: (808) 973-2255
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Testimony of
Mike McCartney
President and Chief Executive Officer
Hawai'i Tourism Authority
on
H.B. 1707
Relating to Transient Accommodations

House Committee on Tourism
Monday, January 30, 2012
10:00 a.m.
Conference Room 312

The Hawai'i Tourism Authority (HTA) offers the following comments on H.B. 1707, which would require a nonresident owner of a transient accommodation to rent the property through a licensed real estate broker or salesperson, and provides a penalty.

HTA feels that H.B. 1707 is not necessary. Under the transient accommodations tax law, the operator of a transient accommodations, who may be an "owner or proprietor or ...lessee, sublessee, ...licensee, or otherwise" is required to pay the transient accommodations tax. The law, in section 237D-8.5, provides for the collection of the rent on behalf of an owner by a third party and the filing of required tax information. Chapter 237D already provides for penalties for engaging or continuing in the business without registering as required by the law.

Thank you for the opportunity to offer these comments.

**PRESENTATION OF THE
REAL ESTATE COMMISSION**

TO THE HOUSE COMMITTEE ON TOURISM

TWENTY-SIXTH LEGISLATURE
Regular Session of 2012

Monday, January 30, 2012
10:00 a.m.

**TESTIMONY ON HOUSE BILL NO. 1707 - RELATING TO TRANSIENT
ACCOMMODATIONS.**

TO THE HONORABLE TOM BROWER, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Carol Ball and I am the Chairperson of the Hawaii Real Estate Commission ("Commission"). The Commission appreciates the opportunity to present testimony on House Bill No. 1707, Relating to Transient Accommodations, and opposes this measure for the following reasons.

House Bill No. 1707, by mandating that the Commission notify the nonresident owner in writing of noncompliance and of the need to take corrective action, requires the Commission to act outside of its legislatively defined purpose. Section 467-4, Hawaii Revised Statutes, clearly states that the purpose of the Commission "is the protection of the general public in its real estate transactions." This new requirement defies the purpose of protecting the general public in its real estate transactions and instead effectively creates an enforcement division of the department of taxation.

House Bill No. 1707 further mandates a real estate broker or salesperson collect and remit the appropriate tax amounts as required by chapter 237.

Testimony on House Bill No. 1707
Monday, January 30, 2012
Page 2

Section 237-8, Hawaii Revised Statutes, outlines that the administration and enforcement of the general excise tax law is “vested in and shall be exercised by the department of taxation.” On its face, this requirement appears to directly violate Hawaii’s general excise tax law.

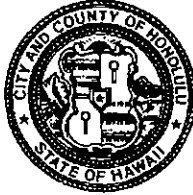
Lastly, this measure imposes the requirement that a real estate broker or salesperson must rent or offer to rent the property only on nonresident owners of rental properties. Section 467-2, Hawaii Revised Statutes, allows any individual owner of real estate to rent or offer to rent their own property without coming under the scrutiny of the Commission. The measure discriminates between resident and nonresident owners of property and how they are managed.

Therefore, for the aforementioned reasons, the Commission opposes this new regulation on transient accommodations. Thank you for the opportunity to testify on House Bill No. 1707.

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

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PETER B. CARLISLE
MAYOR



DAVID K. TANOUÉ
DIRECTOR

JIRO A. SUMADA
DEPUTY DIRECTOR

January 30, 2012

The Honorable Tom Brower, Chair
and Members of the Committee on Tourism
House of Representatives
State Capitol
Honolulu, Hawaii 96813

Dear Chair Brower and Members:

Subject: House Bill No. 1707
Relating to Transient Accommodations

The Department of Planning and Permitting **supports** House Bill No. 1707, which requires nonresident owners of single family residential dwellings, apartments, condominiums, or townhouses who rent their property as a transient accommodation for 30 days or less to rent the property through a licensed real estate broker or salesperson. Further the bill provides penalties for noncompliance.

The Department of Planning and Permitting is responsible for the administration of the Nonconforming Use Certificates (NUC), which are issued to qualified applicants to allow for the conduct of transient vacation rental operations. Without the NUC, the use is prohibited in all zoning districts except hotel resort. However, enforcement efforts against illegal vacation rental operations have been difficult, partly because many property owners, who are conducting vacation rental operations illegally, are nonresidents of Oahu. This makes it difficult for our inspectors to contact the homeowner. For this reason, the proposals in this bill will provide us two immediate benefits: 1) There would be a designated contact person, who should be more familiar with the City's Land Use Ordinance and the restrictions for conducting the vacation rental operations; and 2) The licensed real estate brokers will be subject to the regulatory provisions enforced by the State Department of Commerce and Consumer Affairs, Regulated Industry Complaints Office. This bill will serve as a catalyst for enhanced enforcement efforts between State and City agencies.

The Honorable Tom Brower, Chair
and Members of the Committee on Tourism
House of Representatives
Re: House Bill No. 1707
January 30, 2012
Page 2

Please adopt House Bill No 1707. Thank you for this opportunity to testify.

Very truly yours,

A handwritten signature in black ink, appearing to read 'D. Tanoue', with a long horizontal flourish extending to the left and right.

David K. Tanoue, Director
Department of Planning and Permitting

DT:jmf

hb1707-TransientAccomm-mf.doc

January 30, 2012

The Honorable Tom Brower, Chair
House Committee on Tourism
State Capitol, Room 312
Honolulu, Hawaii 96813

RE: H.B. 1707, Relating To Transient Accommodations

HEARING: Monday, January 30, 2012, at 10:00 a.m.

Aloha Chair Brower, Vice Chair Tokioka and Members of the Committee:

I am Myoung, Government Affairs Director, here to testify on behalf of the Hawai'i Association of REALTORS® (“HAR”), the voice of real estate in Hawai'i, and its 8,500 members. HAR supports the intent of H.B. 1707, which:

1. Requires nonresident owners of single family residential dwellings, apartments, condominiums, or townhouses who rent their property as a transient accommodation for 30 days or less to rent the property through a licensed real estate broker or salesperson;
2. Requires the real estate licensee to collect the rents due on behalf of the owner and remit the appropriate taxes to the State; and
3. Requires the Real Estate Commission to notify the non-compliant, non-resident owner. After 7 days from sending the notice, the nonresident owner shall be fined not more than \$1,000 per day for each day of noncompliance.

HAR understands the importance of ensuring that the State is able to collect the appropriate amount of taxes owed by non-resident property owners. While HAR acknowledges that this measure may serve to increase the number of non-resident owners who hire real estate licensees to manage their properties, HAR also believes that imposing this requirement on real estate licensees would be overly burdensome.

Rather, property owners and real estate licensees should continue to have the ability to freely negotiate the terms and conditions of a property management agreement, including the owner's responsibility to report and remit taxes from rental proceeds to the State. **As such, HAR respectfully requests removal of the requirement that real estate licensees remit the appropriate taxes to the State on behalf of the non-resident owner.**

Mahalo for the opportunity to testify.



January 28, 2012

RE: Testimony Supporting HB 1707

I am providing testimony in support of HB 1707.

We are all aware of the present economic circumstances our State presently finds itself in. I wanted to highlight a very significant concern of real estate professionals throughout Hawaii, as well as a major opportunity for the State to recover major tax revenues it has clear rights to, which it is presently losing every day. The loss of these tax revenues can be avoided in a very straight forward manner as described in HB 1707.

Our State's economy runs on tourism. One aspect of this from a State revenue perspective is tax, both TAT as well as the Excise, for visitors lodging. Our lodging industry is a mature and professional industry, appropriately regulated via licensees of the State, serving our State's guests well, while insuring appropriate tax monies are provided to the State on all visitor stays.

With the advent of the internet, there has been an explosion of Rental By Owner (RBO) activities occurring outside the State via the internet. Owners who reside primarily on the mainland are renting their Hawaii second homes over the internet, without the appropriate on-island representation for, or management of, this rental activity, in direct violation of HRS 521-43(f).

These mainland owners may or may not charge Hawaii Tax on their reservations, and if they do, there is no way to know if some or all of these collected tax revenues are ever provided to the State of Hawaii. This transaction takes place outside of Hawaii invisible to Hawaii tax authorities. The potential loss of TAT and Excise tax revenues from this illicit activity is in the tens of millions of dollars annually, and increases daily.

These tax collected monies, as well as guest rental monies, are intended by regulation to be held in FDIC insured bank Trust accounts in the State of Hawaii where they can be accounted for by state authorities, and consumer's/visitor's interests can be protected. Monies collected by mainland owners of Hawaii properties can be deposited to the property owner's mainland checking account, comingled with their personal funds, and where Hawaii has no means to monitor or protect its tax rights.

Tourism being one of our State's core industries, it is in our vested interest to insure that we do everything we can to insure a positive guest experience, as well as the State capturing as much of the tax revenue that it is entitled to.

We have a whole industry of lodging and real estate companies here in Hawaii that abide by State regulations, and bear the costs of following these rules. These Hawaii companies are being placed in an increasing difficult and noncompetitive position due to the magnitude of the problem. Where not long ago, this RBO activity was a nuisance, it is now approaching 40 to 50% of all condo rental units in Hawaii. Persons who don't abide by laws and regulations, don't bear the costs attributable to them, and can offer goods & services at significant discounts to Hawaii businesses following regulations, and who pay salaries and employee costs.

Lastly, illegal vacation rental activity in locations where this activity should not occur due to zoning, deed restriction, or ordinance is a major issue in several of the counties. Professional property management firms are highly unlikely to involve themselves with properties where rental activity is not permitted. The bulk of the rental activities occurring in locations where short term rentals are not permitted is being conducted via owner direct bookings through the internet. Addressing illegal RBO rental activity, would not only have the beneficial impacts upon Hawaii and its tax revenue short fall as discussed previously, it would significantly reduce this very contentious and emotional issue for Kauai, Oahu and Maui counties.

I would strongly request that for all the good reasons cited above that HB 1707 be enacted into law.

Dan Monck
Exclusive Getaways
www.ExclusiveGetawaysHawaii.com
Kailua-Kona

Testimony for TOU 1/30/2012 10:00:00 AM HB1707

Conference room: 312

Testifier position: Support

Testifier will be present: No

Submitted by: Charles Prentiss

Organization: Kailua Neighborhood Board

E-mail: prentissc001@hawaii.rr.com

Submitted on: 1/27/2012

Comments:

The Kailua Neighborhood Board has been on record for some time recommending increased enforcement for the rental of TVU homes. This Bill HB1707 is an important step in that direction. It could be improved by adding a provision "Notice of any violation action taken shall be transmitted to the appropriate county agency." This would help the counties in their enforcement actions.

Testimony for TOU 1/30/2012 10:00:00 AM HB1707

Conference room: 312

Testifier position: Support

Testifier will be present: No

Submitted by: Kim Horton

Organization: ResorticaHawaii.com Inc

E-mail: Kim@ResorticaHawaii.com

Submitted on: 1/27/2012

Comments:

As an owner of a property management company I am in full support HB1707.

There are many benefits on many levels to the state government, local businesses, tourists and homeowners.

The amount of revenue that can be generated from not just COLLECTED but PAID taxes will be substantial. It is my hope that full collection of taxes will allow us to reduce the GET/TAT back under 10% in the near future.

The fees we need to charge as a legitimate property management company to pay our taxes, liability insurance, healthcare for employees, salaries etc will be supported with the passing of this bill. We will not be undercut by individuals offering "home management" services who are in fact operating as unlicensed property management companies. I just had a client cancel our services because a "home management" company will do everything we do for less because they can afford to. They are not held to the standards a Real Brokerage company is held to. These types of companies are offering property management services disguised as "handy man" and "concierge" and "home management" services. This particular company pays her helpers in "cash". They don't pay taxes and they are not insured for liability or medical.

This law will protect the consumer. Guests will have the confidence to know their money is held in a legitimate client trust account. We have had several last minute bookings because of properties sold or lost in foreclosure. Not only did many of these people lose money, they did not have a place to stay.

My personal opinion is that the time should be in line with the transient accommodation tax that this is required on any properties rented for less than 6 months.

We manage approximately 40 properties. Only 10 subscribe to the automatic GET/TAT tax service to pay the taxes. If the other 30 don't pay the full tax that is passed thru that is a staggering number.

I think the management company should be required to pay the tax or at minimum report how much is paid. We are in an ideal situation to collect on behalf of the state to guaranty payment.

The benefit to the homeowner is their taxes get paid.

January 28, 2012

RE: Testimony Supporting HB 1707

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Lastly, illegal vacation rental activity in locations where this activity should not occur due to zoning, deed restriction, or ordinance is a major issue in several of the counties. Professional property management firms are highly unlikely to involve themselves with properties where rental activity is not permitted. The bulk of the rental activities occurring in locations where short term rentals are not permitted is being conducted via owner direct bookings through the internet. Addressing illegal RBO rental activity, would not only have the beneficial impacts upon Hawaii and its tax revenue short fall as discussed previously, it would significantly reduce this very contentious and emotional issue for Kauai, Oahu and Maui counties.

I would strongly request that for all the good reasons cited above that HB 1707 be enacted into law.

Gerri Monck
Kailua-Kona

Testimony for TOU 1/30/2012 10:00:00 AM HB1707

Conference room: 312

Testifier position: Support

Testifier will be present: No

Submitted by: Jennifer Mulvihill

Organization: Individual

E-mail: jenniferm2210@yahoo.com

Submitted on: 1/27/2012

Comments:

Testimony for TOU 1/30/2012 10:00:00 AM HB1707

Conference room: 312
Testifier position: Support
Testifier will be present: No
Submitted by: Tracy Mulvihill
Organization: Individual
E-mail: tracy@mynvw.com
Submitted on: 1/27/2012

Comments:

am in support of this bill because I had to sell a property on short sale and were relieved when I didn't have to pay the GET/TAT. At the advice and encouragement of my property management company I authorized the monthly collection and transfer of taxes.

I have since assisted in several short sales that have required extra time because taxes were not paid and had to be resolved before closing. Some of those resulted in foreclosure, or bankruptcy. What this says to me is how many people aren't paying? I have seen several VRBO and the like have tax rates quoted at 9.25% - I don't recall it ever being that low. This should be treated like a gas tax, it is all included and we see the total amount at the pump.

COMMITTEE ON TOURISM

Rep. Tom Brower, Chair
Rep. James Kunane Tokioka, Vice Chair
Rep. Karen L. Awana Rep. Scott Y. Nishimoto
Rep. Isaac W. Choy Rep. Clift Tsuji
Rep. Cindy Evans Rep. Corinne W.L. Ching
Rep. Mark J. Hashem Rep. Barbara C. Marumoto
Rep. Angus L.K. McKelvey

NOTICE OF HEARING

DATE: Monday, January 30, 2012

TIME: 10:00 a.m.

PLACE: Conference Room 312

State Capitol

415 South Beretania Street

Aloha Chair Brower and Committee Members:

I am writing to support HB 1707 and HB 2078:

HB1707

RELATING TO TRANSIENT ACCOMMODATIONS.

This bill will provide visitors and residents recourse if there are problems with the unit. This should apply **only** to non-resident owners of property located in Hawaii. Those owners who reside in the state of Hawaii should be exempt. They are already available if there are any issues with the property for visitors and residents to contact.

HB2078

RELATING TO TAXATION.

By having those offering transient vacation rental units place registration numbers in their ads – it will be easier for the State Tax Dept to ensure all taxes due to the state are being collected. This is of high importance to ensure that visitors and owners pay their fair share into the system in order to maintain our infrastructure. Especially during these times of economic hardship.

Mahalo for your time and consideration.

Kathleen M. Pahinui
Oahu, North Shore, Waialua

Testimony for TOU 1/30/2012 10:00:00 AM HB1707

Conference room: 312

Testifier position: Support

Testifier will be present: No

Submitted by: Chris Weiss

Organization: Individual

E-mail: chris@mynvw.com

Submitted on: 1/27/2012

Comments: