

LATE

Testimony to the Senate Committee on Human Services
The Honorable Senator Rosalyn H. Baker, Chair
The Honorable Senator Brian T. Taniguchi, Vice Chair
Members of the Committee

Wednesday, February 22, 2012
9:00 am Room 229
State Capitol, Conference

Testimony by
Raelene Tenno
Favor this bill with comments

(corrected)

Bill No. and Title: SB 2010 RELATING TO TENANCY

Purpose: Prohibits adoption of bylaws that require owner to obtain approval of association to rent or lease or for a particular tenant, provided that rental or lease agreement requires tenant to comply with bylaws and owner indemnifies association for any loss caused by tenant.

Good morning and Thank you for allowing my testimony on SB 2010.

I've been a Condo owner and board member since 1990 and served as president of the board for a few years. I'm still a condo owner and rent out 1 unit in Pokai Bay Cabanas in Waianae which I acquired in the last few years. I am active and aware of Condo issues and am currently a board member of Hawaii Council of Association of Apartment Owners (HCAAO). I am not here as a representative of HCAAO but as an individual fighting my fight.

At Pokai Bay Cabanas, they have a within their 1993 Restated Declaration of Covenants, Conditions and Restrictions and By-Laws (copy attached) a condition that seems inappropriate for an Association to demand of Owners and any prospective owners.

Paragraph 15, in short, requires that any current owner wishing to sell or rent his unit must give to the board 10 days written notice of the terms of any contemplated sale or rental. The notice must specify the name and address of the proposed purchaser or renter (tenant). The board then has the irrevocable option to purchase or rent the unit upon the same terms. If the Board does not accept the option, the owner may then and within 60 days, sell or rent their unit to the proposed buyer or renter with the specified terms of the written 10 day notice. But no such owner may rent the unit without 1st submitting to the Resident Manager for approval by the Board comprising of a Rental Screening Committee. This must be done prior to the signing of any rental agreement. This provision does not apply to foreclosures or the mortgagee renting or selling the unit nor does it apply to the right of an Owner to gift or bequest their interest.

The weirdest part of paragraph 15 is the end which states "shall become void and of no effect 21 years after the death of the survivor of the now living descendants of John F. Kennedy, President of the United States."

As long as I have been a condo owner and taking all the educational seminars from HCAAO or CAI each one always emphasizes the statement to Board members "do not do anything that would put your association at risk or create a liability to the association".

The by-laws and or declarations and 514 A88 or B have provisions in them requiring Owners, guests and their tenants must comply with the by laws, House Rules and declarations but if these rules are against the common sense and have the potential to put the Association at risk of Federal Housing laws then there needs to be a change.

I have attached for your reference the Rental Screening Committee form titled "Pokai Bay Cabanas Rental Application".

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The application asks for items that can be construed as an invasion of privacy by asking if the prospective renter has food stamps and how much. If the board were to deny an applicant that is on section 8 and or has food stamps, it could become a fair housing issue. Thus, creating a huge liability to the Board and their Rental Screening Committee which is comprised of Board members.

Additionally, HRS467-1 (attached) has specific language definitions of a Real Estate Broker or Sales person. Under Hawaii Law if you are not the title owner to the property, you must be a licensed Real Estate person in order to "offer to manage any real estate". Rental Screening is a management function of the Owner or the Owners designated Property Manager.

By Pokai Bay Cabanas requiring a Rental Screening Application and Screening Committee or the name and address, terms or any contemplated sale or rental violates HRS 467-1.

My rental lease agreement is 9 pages long and adds in provisions of the House Rules and also has an additional fine that the tenants must pay should they violate the house rules and incur a fine. Additionally, the Landlord Tenant Code has provisions for House Rule violations (521-72) that can an Owner can pursue to remove a tenant.

I went to RICO with my complaints of the Association and was referred to the Real Estate Commission which referred me to a Condo Specialist. Their reply was "you need to get the owners involved", basically do a Condo Board fight.

I should not have to do a Board fight to get the Board to comply with the Hawaii Law. It should also be a fiduciary duty of the attorney and of the managing agent, since they are the licensed professionals to be sure the AOA functions and operates under the law.

I wrote a letter to the Associations attorney, who is very active in the Condo community. In fact, he served as the Community Associations Institute Hawaii Chapter, education Chairperson in 2010. Of course, I did not get a reply back since he can only respond to inquiries presented by the Board. But my letter prompted an increase to the House Rule from \$25.00 to \$500.00 if a tenant is not prescreened.

This is not an isolated area. At a recent HCAAO seminar, I asked my fellow table guests on how they felt about the rental screening by the Association. I was told by 1 person that her daughters have been subject to the same treatment plus they wanted to know their marital status.

I respectfully and humbly ask the committee to remember that these board members are volunteers and mostly are not educated or trained in Real Estate or Housing Laws. Sometimes they need to be protected from themselves.

§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 or units in a project as defined by section 514A-3 or 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. [L 1933, c 140, §1; RL 1935, §7310; am L 1935, c 126, §§1, 2; am L 1941, c 205, pt of §1; RL 1945, §7731; am L 1949, c 277, §1; am L 1953, c 252, §1; RL 1955, §170-1; am L 1961, c 154, §1; HRS §467-1; am L 1974, c 141, §1; am L 1977, c 197, §1(2); am L 1985, c 141, §2; gen ch 1985; am L 1988, c 145, §1; am L 1989, c 217, §2; am L 1994, c 100, §1; am L 1995, c 241, §1; am L 1997, c 289, §2; am L 1999, c 47, §4 and c 240, §10; am L 2004, c 164, §13; am L 2008, c 28, §10]

Cross References

Discrimination in real estate transactions, see chapter 515.
Uniform land sales practices act, see chapter 484.

Case Notes

Whether party was engaged in real estate broker activities was a question of fact. 692 F. Supp. 1239.
Broker's rights to compensation. 47 H. 220, 386 P.2d 855.
Evidences legislative intent to regulate "middlemen". 68 H. 371, 715 P.2d 805.

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§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 XVII of chapter 346. [L 1933, c 140, §12; RL 1935, §7311; am L 1941, c 205, pt of §1; RL 1945, §7732; RL 1955, §170-2; am L 1961, c 154, §2; HRS §467-2; am L 1971, c 26, §1; am L 1976, c 200, pt of §1; am L 1985, c 141, §3; gen ch 1985; am L 1989, c 217, §2; am L 1991, c 212, §6; am L 1994, c 100, §2; am L 1997, c 350, §17; am L 1998, c 212, §3; am L 2007, c 249, §22; am L 2010, c 89, §6]

Attorney General Opinions

Exception does not apply to an employee of a corporation. Att. Gen. Op. 66-6.

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1155 Kalia Street, 2nd Floor Tel: (808) 539-9777
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PO Box 38078
Honolulu, HI 96837-1078

LATE



January 25, 2011

via Regular and Certified Mail

Ms. Raelene Tenno
P.O. Box 283195
Honolulu, HI 96828

Re Pokai Bay Beach Cabanas Unit 316

Dear Ms Tenno:

I am writing to you on behalf of the Board of Directors for AOA Pokai Bay Beach Cabanas

It has been reported to us that an unscreened tenant moved into Unit 316 on January 15, 2011. This action violates **House Rule 2, C** which states:

"No rentals may be effected without the approval of the Rental Screening Committee."

The Board of Directors for Pokai Bay Beach Cabanas has accordingly imposed a fine of \$25 for this violation, which will be posted to your account

As we have previously pointed out to you, the tenant screening provisions were reviewed and authorized by the law firm of Motooka, Yamamoto & Revere.

We received an incomplete tenant registration form, but have not as yet received a completed screening form. At this time, we ask that you comply with the requirements of the House Rules for Pokai Bay Beach Cabanas in all respects in order to avoid referral of this or other matters to the association attorney for resolution.

Thank you in advance for your anticipated cooperation in helping us to maintain Pokai Bay Beach Cabanas to the standard required of all owners.

If I can be of assistance in clarifying any House Rule concerns, please do not hesitate to contact me as indicated below.

Very truly yours,

Hawaiian Properties, Ltd.
Agent for AOA Pokai Bay Beach Cabanas

Hal Brown, CMCA®
Community Association Manager

(808) 440-6527 direct

(808) 539-9777

HalB@HawaiianProp.com

Enclosures

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Rental Application

Pokah Bay Beach Cabanas

Applying for PBBC UNIT Number _____

given to tenant
by Rm on 11/16/11

Applicant Information

Applicant's name _____

Co-Applicant's name _____

Applicant's address _____

TODAY to complete

Telephone Numbers: Home _____

Work: _____

WFO & return

Driver's License# _____

back to Rm

Total # Occupants of Rental Unit _____

Names _____ of Other Occupants

Rental History

Present Landlord's

Name _____

Phone _____

Previous Address _____

Previous Landlord _____

Phone _____

Employment and Financial Background

Current Occupation _____

How long? _____

Employer's Name and Address _____

Employer Contact Name and Phone _____

Current Salary _____

Do you receive welfare? _____

Cash Amount _____

Food Stamps _____

Other Sources of Income: _____

Section 8 Yes
NO

Vehicles Information

of Vehicles _____

Description of all vehicles

1) License plate # _____ Make/Model _____ Year _____

2) License plate # _____ Make/Model _____ Year _____

EXHIBIT

Personal History - Yes or No

1) Have you ever been evicted? _____

2) Have you ever failed to pay your rent on time? _____

Applicant's Signature _____

Date: _____

Co-Applicant's Signature _____

Date: _____

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Building Relationships that Last

IMPORTANT NOTICE

House Rules Update

TO ALL HOMEOWNER(S):

Due to the problem of unscreened tenants committing violent acts on property, the Board of Directors for POKAI BAY BEACH CABANAS voted the below fining policy change to the House Rules at its meeting on April 11, 2011:

Enforcement, Section M. of House Rules is added as follows:

ANY OWNER FAILING TO HAVE TENANT(S) PRE-APPROVED BY THE RENTAL SCREENING COMMITTEE IN ADVANCE OF MOVE-IN OF THE UNSCREENED TENANT, SHALL BE FINED \$500.00.

This change is in effect immediately.

Please file this notice with your copy of the House Rules.

Please feel free to contact our office for any further questions or clarifications at (808) 539-9777.

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* CITATION *

Date: 1/20/2012 POKAI BAY BEACH CABANAS

To: Renter APT. 316 U ER

OWNE OF 316 RAELENE TENNO

Premises: POKAI BAY BEACH CABANAS

On 1/19/2012 at about 10:16 a.m./p.m., you violated the following By-Laws No. GENERAL PROVISIONS and/or House Rules No. RULE (G) (H) of Pokai Bay Beach Cabanas, as described below:

EXCESSIVE NOISE

NO APARTMENT OCCUPANT SHALL MAKE OR PERMIT TO BE MADE EXCESSIVE NOISE OR NUISANCE TO THE BUILDING. EXCESSIVE NOISE OR NUISANCE IS ANYTHING THAT UNREASONABLY ANNOYS OR INTERFERES WITH THE RIGHTS, COMFORT AND CONVENIENCE OF OTHER APARTMENT OCCUPANTS AT ANY TIME. (H) QUIET HOURS ARE BETWEEN 10:00 PM AND 9:00 AM SEVEN DAYS A WEEK

There is a \$100.00 fine for the violation(s) which must be paid by 2/22/2012

Be informed that if you continue violating or again violate the above-referenced rules or terms after 15 days, then your tenancy at the Premises may be terminated and you may be sued for possession of the Premises.¹³

Signed: The Pokai Bay Board of Directors

The above statement is from landlord Tenant code.

MAILING ADDRESS
HAWAIIAN PROPERTIES
PO BOX 38078
HONOLULU, HI 96838-1078

¹³ This language tracks Haw. Rev. Stat. § 521-72, as a basis for evicting a tenant for violating the By-Laws and/or House Rules.