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**PRESENTATION OF THE
OFFICE OF CONSUMER PROTECTION**

TO THE HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

**TWENTY-SEVENTH LEGISLATURE
REGULAR SESSION OF 2013**

Wednesday, January 30, 2013
2:00 p.m.

**TESTIMONY ON HOUSE BILL NO. 19, RELATING TO THE RESIDENTIAL
LANDLORD-TENANT CODE.**

TO THE HONORABLE ANGUS L.K. MCKELVEY, CHAIR
AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs ("DCCA"), Office of Consumer Protection ("OCP") appreciates the opportunity to appear today and testify on H.B. 19, Relating to the Landlord-Tenant Code. My name is Bruce B. Kim and I am the Executive Director of OCP. OCP submits the following comments for the Committee's consideration:

H.B. 19 seeks to amend HRS § 521-56 which was originally enacted in 1974. The existing statute provides that if the landlord elects to sell a tenant's abandoned property, the landlord must dispose of the property in a "commercially reasonable

manner”. To satisfy the requirement that the landlord sell the property in a “commercially reasonable manner”, the statute directs the landlord to 1) notify the tenant in writing of their intent to sell or donate the property; and 2) advertise the sale in a daily paper of general circulation within the circuit in which the premises is located for at least three consecutive days. Without commenting on the merits of the legislation itself, removing the landlord’s obligation to publish notice of the sale in the newspaper inherently weakens the process established by the legislature to assure that the landlord sells a tenant’s property in a “commercially reasonable manner”. Whereas the current statute provides certainty as to what constitutes sale of the property in a “commercially reasonable manner”, it will be far less clear for both the landlord and the tenant if the existing publication requirement is struck.

The proposed amendment negatively impacts not only the former tenants but also members of the public who may be interested in purchasing abandoned personal property at such a sale. In the absence of public notice, consumers who now rely upon newspaper notices advertising sales of abandoned property will have no way of knowing about the sale. The landlord will then be the only purchaser at the sale and bid a dollar for the property. Having satisfied the terms of the statute, as amended by this legislation, the landlord could then turn around and sell the property at full market value without having to apply the proceeds to the outstanding debt. This circumstance would

be somewhat analogous to conducting a foreclosure sale without requiring public notice of the sale.

This legislation may also negatively impact servicemembers who live in our community, who may be ordered on short notice to deploy out-of-state for long periods of time. Without newspaper publication, unless the servicemember has left a forwarding address, or an address designated by the tenant for the purpose of notification, there would be little chance of the servicemember, or the servicemember's unit, or friends, ever finding out about the impending sale. Mailing notice of the sale to the tenant's previous known address, while statutorily required, has little chance of informing them about the sale, especially if the person receiving the notice addressed to the service member is not related to the servicemember.

The bill as drafted also eliminates the requirement in § 521-56 that the landlord act in "good faith" when determining whether the items are of value. Again the landlord could make an arbitrary determination that the property is not of value and keep all of the tenant's possessions without any duty to offset the value against any existing sums due under the rental agreement.

Another significant amendment in this bill is that it entirely deletes the requirement that the landlord retain the net sale proceeds in trust for the benefit of the tenant for thirty days before it forfeits to the landlord. Deleting this provision unduly benefits the landlord at the expense of the tenant whose property was sold.

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OCP submits that this bill, as currently drafted, would substantially weaken the due process protections of former tenants (especially service members) under the existing statute, would negatively impact consumers interested in purchasing abandoned property, and is highly susceptible to exploitation via the potential hypothetical loophole discussed above.

Thank you for the opportunity to testify on H.B. 19. I will be happy to answer any questions that the members of the Committee may have.

kawakami2 - Rise

From: mailinglist@capitol.hawaii.gov
Sent: Monday, January 28, 2013 11:43 AM
To: CPCtestimony
Cc: richelle.thomson@yahoo.com
Subject: *Submitted testimony for HB19 on Jan 30, 2013 14:00PM*

HB19

Submitted on: 1/28/2013

Testimony for CPC on Jan 30, 2013 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Richelle Thomson	Individual	Support	No

Comments:

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