



February 25, 2013

The Honorable Angus L. K. McKelvey, Chair
House Committee on Consumer Protection & Commerce
State Capitol, Room 325
Honolulu, Hawaii 96813

RE: H.B. 457, Relating to ACT 326, Session Laws of Hawaii 2012, Reporting Requirements.

Aloha Chair McKelvey, Vice Chair Kawakami, and Members of the Committee:

I am Dan Monck, here to testify on behalf of the Hawai'i Association of Vacation Rental Managers ("HAVRM").

HAVRM **submits comments** on H.B. 457 which seeks to clarify an association's duties, and limit the fines imposed upon an association, while also holding an owner or operator of a transient accommodation accountable for failure to report, under ACT 326, Session Laws of Hawaii 2012.

H.B. 457 serves to clarify that within ACT 326, an association's duty to report relevant information to the Department of Taxation is limited to the information the association actually receives from a transient accommodations operator. H.B. 457 also clarifies that the limit of fines that may be imposed upon an association for failure to report is not to exceed \$2500. These clarifications are both constructive and appropriate.

HAVRM supports the intent of H.B. 457 to "clean up" aspects of ACT 326, Session Laws of Hawaii 2012, and would like to identify improvements to H.B. 457 for the committee's consideration.

In addition to the suggested change of H.B. 457 above, there are two important changes that also need to be made to Act 326's language that should be corrected within H.B. 457. The first change removes conflict with the Real Estate Statute, HRS 467, and as such is very important. The second change advocates language that provides consistency with Act 326's stated intent as expressed in Act 326 Section 1 to provide clarity of purpose.

2) Act 326 Section 2(h) reads: **"Nothing in this section shall be deemed to create an employer-employee relationship between an operator and its local contact."**

The reason a "Local Contact" in Act 326 can act on behalf of an owner of rental real estate is due to the exception clause of Real Estate Statute, 467-2 permitting an owner's "Custodian or

Caretaker" to do so. The term "Custodian or Caretaker " is a defined term within the Real Estate Statute, 467-1, to specifically identify how this exception be allowed in 467-2. A key component of the definition of Custodian or Caretaker in the Real Estate Code, 467-1, is that "*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.

Act 326 Section 2(h) as demonstrated above is presently in direct conflict with the Real Estate Statute's exception clause that permits the "Local Contact" to act on behalf of the rental operator in the first place. Act 326 2(h) should be corrected to read "**The Local Contact is employed as an employee of the operator**", which is the same employer-employee language used within 467-1 in the Custodian or Caretaker definition to correct this Act's defect.

3) Act 326 2(h) also reads: "Local contact" means an individual or company contracted by the operator of the transient accommodation to provide services required by this section. Per the present language of ACT 326, the only service required of the "section" is to be located on the island where the transient accommodation is being conducted. There is no requirement to act on behalf of the rental operator to provide consumer protections as explained in Act 326 Section 1, and which is a requirement of HRS 521-43(f), "*Any owner or landlord who resides without the State or on another island from where the rental unit is located shall designate on the written rental agreement an agent residing on the same island where the unit is located to act in the owner's or landlord's behalf.*"

The modified clause below clarifies this language to be consistent with the Act 326's stated intent as expressed in Act 326 Section 1.

"Local contact" means an individual or company contracted in writing by the operator of the transient accommodation to provide services required by this section, and with all applicable laws and rules including chapter 467 and 521, Hawaii Revised Statutes."

Similarly, Act 326 2(e) ends stating "and shall meet all other requirements under subsection (a). Subsection (a) only requires the Local Contact to be located on-island where the transient accommodation is taking place. Act 326 2(e) ending should state ""and shall meet all other requirements under subsection (a), and the local contact shall comply with all applicable laws and rules including chapter 467 and 521, Hawaii Revised Statutes". In this way, the intended requirements of the Local Contact are clear, and the language change is consistent with Act 326 Section 1.

Mahalo for the opportunity to testify.