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To: The Honorable Angus L. K. McKelvey, Chair
and Members of the House Committee on Consumer Protection and Commerce

Date: Monday, March 31, 2014
Time: 2:00 P.M.
Place: Conference Room 325, State Capitol

From: Frederick D. Pablo, Director
Department of Taxation

Re: S.B. 41, S.D.1, Relating to Real Estate

The Department of Taxation (Department) **supports** the intent of S.B. 41, S.D. 1 to clarify who may be designated as a local contact under Act 326, Session Laws of Hawaii 2012. The Department has received many inquiries from the public on this issue.

S.B. 41, S.D. 1 clarifies the specific duties of a designated local contact under Act 326 and further clarifies that being designated a local contact under Act 326 does not, by itself, allow a person to perform any services that require being licensed under chapter 467, Hawaii Revised Statutes. This measure is effective upon approval.

The Department suggests amending this measure to further clarify that the local contact may be either an individual who resides on the same island as the transient accommodation, or an entity that has its principal place of business on the same island.

Thank you for the opportunity to provide comments.

**PRESENTATION OF THE
REAL ESTATE COMMISSION**

TO THE HOUSE COMMITTEE ON
CONSUMER PROTECTION AND COMMERCE

TWENTY-SEVENTH LEGISLATURE
Regular Session of 2014

Monday, March 31, 2014
2:10 p.m.

**TESTIMONY ON SENATE BILL NO. 41, S.D. 1, PROPOSED H.D. 1 - RELATING TO
REAL ESTATE.**

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

My name is Nikki Senter and I am the Chairperson of the Hawaii Real Estate Commission ("Commission"). The Commission appreciates the opportunity to present testimony on Senate Bill No. 41, S.D. 1, Proposed H.D. 1, Relating to Real Estate, which provides for the discretionary authority of the Commission to waive up to one year of the required three years of full time experience. The Commission opposes this measure for the following reasons.

Section 1 of the measure misstates what actually occurred in 2001. Act 245 of the Session Laws of Hawaii 2001, did not repeal an exemption, it repealed the more stringent requirement of mandating that the broker candidate have three years full time experience immediately prior to the licensing examination, and not the more reasonable current requirement of having experience in three years of the last five years.

The Commission is a nine-member volunteer body tasked with ensuring the protection of the general public in its real estate transactions. One of the ways the Commission accomplishes this goal is through the requirement that Hawaii real estate

salesperson licensees wanting to become real estate brokers must hold an active license with full time experience devoted to real estate salesperson activity in three of the last five years. As the industry constantly evolves with new requirements and statutory amendments, this protection requires the licensee to remain up to date with current practices in the industry. Failure to stay abreast of the current practices would inevitably result in consumer harm.

Further, the proposed measure would allow the Commission to consider any experience in a real estate field, regardless of the nature of that experience and would open the flood gates to anyone wishing for a waiver from a real estate related field, e.g., surveyors, appraisers, journalists, and landscapers. The Commission would be inundated with requests for waivers from other licensed areas and would then need to equate the experience of a real estate licensee with one in a totally foreign profession. Current consumer protection policies in place would be further eroded.

For the aforementioned reasons, the Commission opposes Senate Bill No. 41, S.D. 1, Proposed H.D. 1. Thank you for the opportunity to testify.

VIA FACSIMILE (808-586-8437)

AND E-MAIL: <http://www.capitol.hawaii.gov/submittestimony.aspx>

TO: Representative Angus L. K. McKelvey
Chair
Committee on Consumer Protection and Commerce
State Capitol, Room 314
415 South Beretania Street,
Honolulu, Hawai'i 96813

FROM: Mr. Ka'imi Judd
160 Kuli Pu'u Street
Kīhei, Hawai'i 96753

DATE: March 28, 2014

RE: **Senate Bill 41, HD 1 PROPOSED (Real Estate Broker Requirements)
Amended Agenda, March 31, 2014, 2:10 PM**

Aloha, Chair McKelvey, Vice Chair Kawakami and Committee,

I write in **support** of Senate Bill 41, HD1, PROPOSED, as it relates to real estate broker requirements.

Hawai'i Revised Statutes (HRS) § 467-9.5, in its current form, unfortunately did not consider the effects of the economic downturn at the time its language was drafted. Amending the statute allows the Real Estate Commission some discretion to grant a Certificate of Experience to Real Estate Broker candidates impacted by the downturn under certain circumstances.

I am a "local boy" who was born and raised in Hawai'i, went on to Yale University to study architecture and returned to Hawai'i in 1993 to raise a family and care for my island home. I am a Board Member of Habitat for Humanity West Hawai'i and recently moved to Maui with my wife Malika Dudley and my son Jackson to become the VP of Development for the Makena Golf & Beach Club.

I have played a key role in real estate development since 2001 in Hawai'i and the mainland and have been a Licensed Real Estate Salesperson in Hawai'i since July 2008. Due to the economic downturn, the Real Estate brokerage at my former place of employment, Kohanaiki Shores on the Big Island, had closed its sales doors from 2010 through 2012. I am pursuing a License as a Hawai'i Real Estate Broker, but due

to this closure, my license activity falls just short of the current requirement of “3 years of activity in the last 5 years.” As time moves forward, I am unable to increase this requirement as I lose the same amount of time on the back end. I was unable to maintain my active license during this period as I was employed full-time by the same ownership group at Kohanaiki Shores as Project Manager.

I understand on at least one occasion, an otherwise qualified Real Estate Broker candidate, not myself, was denied in his application due to his own circumstances of not meeting the requirement of 3 years of activity in the last 5 years. I believe that the current version in HRS § 467-9.5, though perhaps intended to avoid abuse by eliminating any flexibility, is unduly restrictive when weighed against the practical effects of the recent economic downturn. I support any revision to HRS § 467-9.5 in a way that still mitigates abuse while also allowing qualified candidates such as myself to advance professionally in a fair and proper manner.

Thank you for your consideration.

Sincerely,



Ka'imi Judd

LATE



March 31, 2014

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

RE: S.B. 41 SD1 HD1, RELATING TO REAL ESTATE

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").

This letter is written in **SUPPORT of SB 41 SD1 HD1 with additions.**

Over the past decade, an increasing number of unlicensed individuals have appeared offering rental services to property owners in conflict with of HRS 467-1 & 467-2 in this regard.

The off-island property owner's rental "agent" as identified in the Landlord Tenant code, HRS 521-43(f), is responsible for "acting on behalf of the off-island rental property owner" as required by the Landlord Tenant Code. This "agent's" activities in the fulfillment of their responsibility to the rental property owner described above is governed by HRS-467.

The requirement for an on-island "agent" for off-island rental owners being in one statute, HRS 521, and the activities of this on-island rental "agent" falling under the auspices of another statute, HRS-467, lends itself to not being readily understood, or often times intentionally ignored, by many individuals.

We would advocate the definition of "custodian or caretaker" in HRS-467 be amended to read as follows:

""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, rents or offers to rent, or who acts as a designated agent pursuant to section 521-43(f) for 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.

Adding this clarification to HRS-467, illustrates that the requirement necessary for renting or leasing a remote owner's property identified in the Landlord Tenant Code 521-43(f), must take place in accordance with the Real Estate Code, the Statute which governs the rental or leasing of Real Estate in the State of Hawaii.

While appearing quite simple, this suggested augmentation of HRS 467 not only clarifies a point of confusion for many property owners, it also lays the foundation for addressing several serious issues being noted across the State affecting consumer protection, county zoning complaints, legitimate Hawaii tourism operators, and the collection of tens of millions of dollars in Hawaii tax collection, due to the explosion of rental activities that are not being conducted in accordance with our State's regulations.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Dan Monck', with a large, sweeping flourish at the end.

Dan Monck
President
Hawaii Association of Vacation Rental Managers

Real Estate Commission Bulletin

Off-Island "Agent" – Licensee or Non-licensee?



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www.hawaii.gov/hirec

When Act 326, Session Laws of Hawaii 2012, was passed, the Real Estate Branch received many calls from licensees who did not understand Act 326, especially the "Local Contact" identified within this Act, and whether or not this "Local Contact" fulfills the off-island agent requirement as stated in Hawaii Revised Statutes ("HRS") Chapter 521, the Residential Landlord-Tenant Code. If you are offering to rent property owned by an off-island owner, an on-island agent is required by HRS §521-43(f), the Residential Landlord-Tenant Code. "Agent" is not defined in Chapter 521, HRS.

The "Local Contact" defined in Act 326 pertains to HRS Chapter 237D, Transient Accommodations Tax. The "Local Contact" individual is an on-island individual who must register with the Department of Taxation to assist in the collection of taxes regarding the rental property. Act 326, and its "Local Contact" is not necessarily the individual who may act as an on-island agent for off-island rental property owners.

"Agent" is also not defined in HRS Chapter 467, the real estate brokers and salespersons licensing law. As used in HRS 521, "off-island agent" is not defined in Chapter 467. For an off-island property owner, landlord, trustee, or a person with the power of attorney from the owner, who is offering to rent Hawaii property, if the on-island agent is also involved in real estate activities, this on-island agent needs a real estate license.

An "on-island" agent may be one of the following:

- a) Hawaii-licensed real estate broker or salesperson; or
- b) "Custodian or caretaker" – "custodian or caretaker" is one of the exceptions to requiring a real estate license, and is defined in Chapter 467, HRS, and reads, "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, 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." (emphasis added)

The "custodian or caretaker" exemption is an unlicensed individual, who for a single owner, manages or cares for the single owner's property. The single owner may be an individual or an entity. The single owner must employ the custodian or caretaker. Information on employing another individual may be obtained from the State Department of Taxation and the State Department of Labor and Industrial Relations. There will likely be other considerations when employing the custodian or caretaker such as requirements for unemployment insurance, workmen's compensation insurance, temporary disability insurance, vacation and sick pay, etc. Single owners may own more than one real property. If the single owner is an entity, however, the entity employing a custodian or caretaker must be licensed as a real estate broker or hire a licensed real estate broker to manage the single owner's property. The exceptions to having a real estate license as listed in HRS §467-2 are for individuals, NOT entities.

Real estate licensees listing and selling investment or rental properties should disclose to potential buyers and the licensees representing them, the requirement for an on-island agent if the buyer of a rental property does not or will not reside on the island where the property is located.

The on-island agent may be a non-licensee or a real estate licensee. Again, depending what the non-licensee on-island agent DOES will determine if the on-island agent requires a real estate license.