

DAVID Y. IGE
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JO ANN M. UCHIDA TAKEUCHI
DEPUTY DIRECTOR

**PRESENTATION OF THE
OFFICE OF CONSUMER PROTECTION**

TO THE HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

**THE TWENTY-NINTH LEGISLATURE
REGULAR SESSION OF 2017**

**FEBRUARY 22, 2017
2:00 P.M.**

**TESTIMONY OPPOSING H.B. 1009, H.D. 1, RELATING TO THE LANDLORD TENANT
CODE.**

**TO THE HONORABLE ANGUS L. K. MCKELVEY, CHAIR,
AND TO THE HONORABLE LINDA E. ICHIYAMA, VICE CHAIR,
AND MEMBERS OF THE COMMITTEE:**

The Department of Commerce and Consumer Affairs, Office of Consumer Protection (“OCP”) opposes H.B. 1009, H.D. 1 Relating to the Landlord Tenant Code. My name is Stephen Levins and I am the Executive Director of the OCP.

H.B. 1009, H.D. 1 allows a landlord to restrict access to a dwelling unit for failure to pay rent or when the tenant quits the premises, requires a landlord to provide access to a tenant for a period of twenty-four hours to remove personal property, deems the personal property abandoned if not timely removed, and allows a landlord to dispose of a tenant’s property.

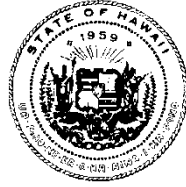
The OCP is opposed to H.B. 1009, H.D. 1 since current law already adequately protects the rights and remedies of a landlord in the above described instances.

If a tenant fails to timely pay their rent a landlord can demand payment anytime after it is due and seek to terminate the rental agreement after the five-day statutory waiting period. If the tenant does not pay the past-due rent in full after receiving the landlord's notice, the landlord may sue to evict the tenant. This procedure has been codified to ensure that both a tenant and landlord are afforded sufficient due process of law. Denying a tenant their right to occupy their rental as contemplated in this measure unnecessarily complicates the current legal processes.

Additionally, Section 56 of the Landlord Tenant Code (Code), section 521-56 of the Hawaii Revised Statutes, already sufficiently governs the manner in which a landlord can dispose of a tenant's possessions. This existing law provides reasonable procedures for notifying a tenant regarding a landlord's intention and manner of disposing a tenant's personalty. This section of the Code provides the landlord with options to address the tenant's belongings. If the landlord in good faith determines those items to be of value, the landlord can store the items at the tenant's expense. If the landlord feels that the tenant will not be able to pay for the storage, the landlord can choose other options available in the Code. They include selling the items as well as donating them to a charitable organization. Allowing a landlord to dispose of a tenant's worldly possessions on twenty-four hours' notice is impractical, unnecessary, and harsh. There is no reason to change an effective procedure that has been codified in Hawaii for decades.

Thank you for the opportunity to offer comments opposing H.B. 1009, H.D. 1. I would be happy to answer any questions members of the Committee may have.

DAVID Y. IGE
GOVERNOR



HAKIM OUANSAFI
EXECUTIVE DIRECTOR

BARBARA E. ARASHIRO
EXECUTIVE ASSISTANT

STATE OF HAWAII
HAWAII PUBLIC HOUSING AUTHORITY
1002 NORTH SCHOOL STREET
POST OFFICE BOX 17907
HONOLULU, HAWAII 96817

LATE

Statement of
Hakim Ouansafi
Hawaii Public Housing Authority
Before the

HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

Wednesday, February 22, 2017
2:01 PM
Room 329, Hawaii State Capitol

In consideration of
HB 1009, HD1
RELATING TO THE LANDLORD TENANT CODE



Honorable Chair McKelvey and Members of the House Committee on Consumer Protection and Commerce, thank you for the opportunity to provide testimony regarding House Bill 1009, HD1, relating to landlord tenant code.


The Hawaii Public Housing Authority (HPHA) supports HB 1009, HD1, which requires a landlord to provide tenant access to a dwelling unit for a period of 24 hours solely for removal of the tenant's possessions when the tenant quits the premises or fails to pay rent, and provides that after the 24-hour period, the tenant's property shall be deemed abandoned and may be immediately disposed.

Prior to a tenant's eviction from public housing, adequate notice is provided to allow tenants an opportunity to begin moving their possessions from the premises. Items of value to the tenant are removed and everything else, including large pieces of furniture, are often left and rarely recovered by the tenant following eviction. HPHA is, thereafter, forced to store the abandoned property until such time that they may be sufficiently disposed. Storage can be costly and, when unavailable, the agency is forced to leave property in the unit itself, thereby preventing a new tenant entry into housing. Without forwarding addresses, reasonable efforts to provide notice of intent to sell is difficult, and notice of sale in the newspaper is often costly. The proposed bill would assist in speeding up the process of removing abandoned items.

The HPHA appreciates the opportunity to provide the House Committee on Consumer Protection and Commerce with the HPHA's comments regarding HB 1009, HD1. We thank you very much for your dedicated support.



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February 22, 2017

The Honorable Angus L.K. McKelvey, Chair
House Committee on Consumer Protection & Commerce
State Capitol, Room 329
Honolulu, Hawaii 96813

RE: H.B. 1009, H.D.1, Relating to the Landlord Tenant Code

HEARING: Wednesday, February 22, 2017, at 2:01 p.m.

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

I am Myoung Oh, Director of Government Affairs, here to testify on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its 9,000 members. HAR **offers comments** on H.B. 1009, H.D.1 which requires a landlord to provide tenant access to a dwelling unit for a period of 24 hours solely for removal of the tenant's possessions when the tenant quits the premises or fails to pay rent. It provides that after the 24-hour period, the tenant's property shall be deemed abandoned and may be immediately disposed.

While HAR appreciates the intent of this measure, giving access to a prior tenant that may have been forcibly removed could be troublesome depending on the tenant's state of mind. Furthermore, the struggle for us is how do we inform the prior tenant when the period begins and ends? In these situations, we often don't have current valid contact information for the prior tenant.

To put this into perspective, a tenant doesn't pay when rent due at the 1st of the month. The informed landlord must then serve a 5-day demand letter on tenant giving tenant 5 working days to pay or legal action will begin. After the 5 days have lapsed, the landlord assigns the case to an attorney and the attorney files suit which usually takes about 2 weeks. It can take longer if the tenant contests the suit.

The court and a hearing issues a writ of possession and if the tenant has not moved, it is assigned to a sheriff who serves the writ on the tenant. At that point the sheriff can remove the tenants possessions and put them in storage. Typically, the sheriff will give the tenant a day to move with personal belongings.

HAR believe that by the point at which the tenant is issued a writ of possession, tenants should inherently waive any rights to items that they intentionally leave behind.

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HAR recommends language giving the landlord the right to dispose of any items left behind without qualification.

§521-56 Disposition of tenant's abandoned possessions. (a) When the tenant, within the meaning of section 521-70(d) or section 521-44(d), has wrongfully quit the premises, or when the tenant has quit the premises pursuant to a notice to quit or upon the natural expiration of the term, and has abandoned personalty which the landlord, in good faith, determines to be of value, in or around the premises, the landlord may sell such personalty, in a commercially reasonable manner, store such personalty at the tenant's expense, or donate such personalty to a charitable organization. ~~**Before selling or donating such personalty, the landlord shall make reasonable efforts to apprise the tenant of the identity and location of, and the landlord's intent to sell or donate such personalty by mailing notice to the tenant's forwarding address, or to an address designated by the tenant for the purpose of notification or if neither of these is available, to the tenant's previous known address. Following such notice, the landlord may sell the personalty after advertising the sale in a daily paper of general circulation within the circuit in which the premises is located for at least three consecutive days, or the landlord may donate the personalty to a charitable organization; provided that such sale or donation shall not take place until fifteen days after notice is mailed, after which the tenant is deemed to have received notice.**~~

(b) The proceeds of the sale of personalty under subsection (a) shall, after deduction of accrued rent and costs of storage and sale, including the cost of advertising, be held in trust for the tenant for thirty days, after which time the proceeds shall be forfeited to the landlord.

(c) When the tenant has quit the premises any personalty in or around the premises left unsold after conformance to subsection (a) or otherwise left abandoned by the tenant and determined by the landlord to be of no value may be disposed of at the landlord's discretion without liability to the landlord. [L 1974, c 180, §6; am L 1981, c 154, §1]

Mahalo for the opportunity to testify.



TESTIMONY IN OPPOSITION TO HB 1009 –
RELATING TO RESIDENTIAL LANDLORD-TENANT CODE

HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE – ROOM 329

Representative Angus L.K. McKelvey, Chair
Representative Linda Ichiyama, Vice Chair

February 22, 2017 at 2:01 p.m.

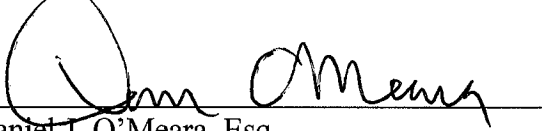
The Legal Aid Society of Hawai'i (Legal Aid) submits testimony in opposition to HB 1009 – Relating to Residential Landlord-Tenant Code. For Legal Aid, my name is Dan O'Meara and I am the Managing Attorney of Legal Aid's Asset Protection Unit, a unit that provides legal assistance in housing (landlord/tenant), foreclosure, fair housing, consumer, and tax issues.

HB 1009 would have a negative impact on the low-income population served by Legal Aid. Right now HRS §521-56 provides protection for disposition of a tenant's possessions, including allowing time and notice before a tenant's possessions are trashed or relinquished. HB 1009 deems a tenant's possessions abandoned after just 24 hours. Such a short period of time without meaningful notice or compensation, based merely on a Writ of Possession, is unnecessary and potentially punitive. HB 1009 is only a short step from the problems encountered by the City and County of Honolulu and their destruction of the property of the homeless in the sweeps in 1995.

HRS §521-56 already balances the interests of the landlord and tenant. HB 1009 unnecessarily tips the landlord-tenant balance to the detriment of tenants, especially those without the resources to immediately pay for a storage space.

Thank you for this opportunity to provide testimony. We will not be able to attend the hearing and stand on this testimony.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel J. O'Meara", written over a horizontal line.

Daniel J. O'Meara, Esq.
Managing Attorney, Asset Protection Unit
Legal Aid Society of Hawai'i

The Legal Aid Society of Hawai'i is the only legal service provider with offices on every island in the state, and in 2016 provided legal assistance to over 8,500 Hawai'i residents in the areas of consumer fraud, public assistance, family law, the prevention of homelessness, employment, protection from domestic violence, and immigration. Our mission is to achieve fairness and justice through legal advocacy, outreach, and education for those in need.

LATE

Dear Representatives:

I am writing regarding HB 1009.

I support shortening the period of time to deal with a tenant's abandoned belongings and clarifying a landlord's obligations regarding those belongings. However, I do not support this particular bill.

Presently, Hawaii's Landlord Tenant Code says that, whenever a tenant leaves anything of value behind, the landlord must notify the tenant in writing and store the belongings for 15 days. After that, the landlord has to sort through what was left behind and determine what is, and what is not, valuable, and must either donate or sell what the landlord considers valuable. See, Haw. Rev. Stat. Ann. § 521-56.

Most landlords do not want to move a tenant's belongings during this time period because of fear of accusations that the tenant's valuables were stolen. So landlords often just lock up the rented premises and wait for the 15 days to pass. After the 15 days have passed, the landlord then has to go through the laborious and time-consuming process of determining which of the tenant's abandoned possessions have value.

Generally, that means that for the 15 days that the landlord is waiting, plus the time that is necessary for the landlord to sort through the tenant's belongings and then donate or sell them, the rented premises is not in use and cannot be used by another tenant. This causes financial losses for the landlord, who cannot collect rent, and makes a valuable housing unit unavailable to the next tenant who wants to live in the unit.

Rather than adding a new statute, I suggest that you modify the existing statute as follows:

(a) When the tenant, within the meaning of section 521-70(d) or section 521-44(d), has wrongfully quit the premises, or when the tenant has quit the premises pursuant to a notice to quit, upon eviction, or upon the natural expiration of the term, and has abandoned personalty ~~which the landlord, in good faith, determines to be of value,~~ in or around the premises, the landlord may sell such personalty, in a commercially reasonable manner, store such personalty at the tenant's expense, ~~or~~ donate such personalty to a charitable organization, or may dispose of it in any other way without liability to the landlord. Before ~~selling or donating~~ disposing of such abandoned personalty, the landlord shall make reasonable efforts to apprise the tenant of the identity and location of, and the landlord's intent to ~~sell or donate~~ dispose of such personalty by mailing notice to the tenant's forwarding address, or to an address designated by the tenant for the purpose of notification or if neither of these is available, to the tenant's previous known address. Following such written notice, the landlord may ~~sell the personalty after advertising the sale in a daily paper of general circulation within the circuit in which the premises is located for at least three consecutive days, or~~

the landlord may donate the personalty to a charitable organization; provided that such sale or donation shall not take place until dispose of the personalty no sooner than ~~fifteen~~ seven days after notice is mailed, after which the tenant is deemed to have received notice. If, prior to disposal, the tenant requests access to the tenant's personalty the landlord must allow the tenant access for a reasonable period of time not to exceed 6 hours during the seven day period after notice is mailed. The landlord may permit further access to the tenant at the landlord's discretion. The tenant shall bear the risk of loss to any personalty that remains in the premises after the tenant quits or is evicted and, except as provided in this section, landlord shall not be liable for any loss or damage to the personalty.

(b) The proceeds of the sale of personalty under subsection (a) shall, after deduction of accrued rent and costs of storage and sale, including the cost of advertising, be held in trust for the tenant for thirty days, after which time the proceeds shall be forfeited to the landlord.

(c) When the tenant has quit the premises any personalty in or around the premises left unsold after conformance to subsection (a) or otherwise left abandoned by the tenant and determined by the landlord to be of no value may be disposed of at the landlord's discretion without liability to the landlord.

I am not in favor of allowing a tenant 24-hour access after they have been evicted. Usually, landlords want to supervise access since damage to the property is possible. It would be better to limit access to a certain amount (2 - 4 hours) of time during normal business hours or as agreed to between the landlord and tenant.

David W.H. Chee
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