

HB 1869 HD 1

Measure Title: RELATING TO THE LANDLORD TENANT CODE.

Report Title: Landlord Tenant Code; Holdover Seller;
Exemption

Description: Provides a specific exemption to the landlord
tenant code for sellers who occupy the residential
real property after the transfer of the seller's
ownership rights. (HB1869 HD1)

Companion: [SB2640](#)

Package: None

Current
Referral: CPH

Introducer(s): TAKUMI, ICHIYAMA



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TO THE SENATE COMMITTEE ON
COMMERCE, CONSUMER PROTECTION, AND HEALTH

TWENTY-NINTH LEGISLATURE
Regular Session of 2018

Thursday, March 22, 2018
9:15 a.m.

**TESTIMONY ON HOUSE BILL NO. 1869, H.D. 1 – RELATING TO THE LANDLORD
TENANT CODE.**

TO THE HONORABLE ROSALYN H. BAKER, CHAIR, AND MEMBERS OF THE
COMMITTEE:

The Department of Commerce and Consumer Affairs (“Department”) appreciates the opportunity to testify on H.B. 1869, Relating to the Landlord Tenant Code. My name is Stephen Levins, and I am the Executive Director of the Department’s Office of Consumer Protection (“OCP”). The Department takes no position on this bill and offers the following comments.

This bill exempts sellers of a residential property who occupy residential property after the transfer of the seller’s ownership rights from Hawaii Revised Statutes (“HRS”) chapter 521, the Residential Landlord-Tenant Code (“Landlord-Tenant Code”).

The Landlord-Tenant Code governs the relationship between landlords and tenants and clarifies rights and obligations of the parties in a tenancy by covering: (1) rental agreements; (2) security deposits; (3) repairs; (4) prohibited practices; (5) termination of tenancy; (6) landlord obligations; (7) tenant obligations; (8) landlord


remedies; and (9) tenant remedies. H.D. 1 amends H.B. 1869 by changing its effective date to July 1, 2050, to promote further discussion.

In a typical real estate transaction, sellers move out of a property prior to closing, when the seller's ownership rights are transferred to the buyer. When a seller does not or refuses to move out, however, they become a "holdover seller," and the new buyer is unable to take possession of the property that he just purchased. This bill proposes to address this issue by exempting a "holdover seller" from the Landlord-Tenant Code. The "holdover seller" could still be removed from the property but only through an ejectment proceeding, which generally requires less judicial process.


One area of concern involves victims of mortgage rescue fraud. OCP has investigated and initiated enforcement actions in numerous consumer fraud cases stemming from mortgage foreclosure rescue scams. A common mortgage foreclosure scam involves a homeowner transferring his ownership rights to a mortgage rescue company because the mortgage rescue operator has told the homeowner that he can negotiate a better and more affordable loan if he transfers title to the company and then has the company retransfer ownership to him once the new loan is complete. An unscrupulous mortgage rescue operator could use the exemption proposed in this bill and eject the homeowner who had unwittingly transferred his title to the scammer.

Thank you for the opportunity to testify on H.B. 1869, H.D. 1. I would be happy to answer any questions the Committee may have.



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March 22, 2018

The Honorable Rosalyn H. Baker, Chair

Senate Committee on Commerce, Consumer Protection & Health
State Capitol, Room 229
Honolulu, Hawaii 96813

RE: House Bill 1869, HD1, Relating to the Landlord-Tenant Code

HEARING: Thursday, March 22, 2018, at 9:15 a.m. in Room 229

Aloha Chair Baker, Vice Chair Tokuda and Members of the Committee,

I am Ken Hiraki, 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 close to 9,500 members. HAR **strongly supports** House Bill 1869, HD1, which provides a specific exemption to the Landlord-Tenant Code for sellers who occupy the residential real property after the transfer of the seller's ownership rights.

In a typical residential real estate transaction, buyers take occupancy and control of the property upon closing of Escrow and title transfers from the seller to buyer. However, in some instances, the buyer needs to take early occupancy of the property prior to closing. This situation is exempt from the Landlord-Tenant Code under HRS §521-7.

"[o]ccupancy under a bona fide contract of sale of the dwelling unit or the property of which it is a part where the tenant is, or succeeds to the interest of, the purchaser."

In this scenario we have an Early Occupancy Contract to spell out the terms and conditions between the buyer and seller as part of the real estate transaction process.

Conversely, there are times when a seller may need to extend occupancy of the property beyond close of Escrow. It can be for various reasons, but most common is needing additional time to move. However, this equally but important exclusion is not provided for in the Landlord-Tenant Code. This measure mirrors the same exemption already provided for in an early occupancy by the buyer to a late occupancy by the seller.

We respectfully request a November 1st effective date, to allow us time to create a new Standard Form real estate contract.

Mahalo for the opportunity to testify in strong support of this measure.

