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TO THE HOUSE COMMITTEE ON
CONSUMER PROTECTION AND COMMERCE

TWENTY-NINTH LEGISLATURE
Regular Session of 2018

Tuesday, February 6, 2018
2:00 p.m.

TESTIMONY ON HOUSE BILL NO. 1869 – RELATING TO THE LANDLORD TENANT CODE.

TO THE HONORABLE ROY M. TAKUMI, 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, which is a companion to S.B. 2640, and offers the following comments.

This bill exempts sellers of a residential property who occupy residential property after the transfer of the seller’s ownerships 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.


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 "hold over 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. I would be happy to answer any questions the Committee may have.



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February 6, 2018

The Honorable Roy M. Takumi, Chair

House Committee on Consumer Protection & Commerce
State Capitol, Room 329
Honolulu, Hawaii 96813

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

HEARING: Tuesday, February 6, 2018, at 2:00 p.m. in Room 329

Aloha Chair Takumi, Vice Chair Ichiyama, 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**, 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.

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



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February 2, 2018

Rep. Roy Takumi, Chair
Rep. Linda Ichiyama, Vice-Chair
House Committee on Consumer Protection & Commerce

Re: Testimony in Re
HB1869 RELATING TO THE LANDLORD-TENANT CODE
Hearing: Tues., Feb. 6, 2018, 2 p.m., Conf. Rm. #329

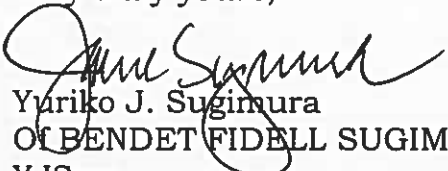
Chair Takumi, Vice-Chair Ichiyama and Members of the Committee:

I am Jane Sugimura and I have served on the District Court Rules and Forms Committee for many years. This testimony is being submitted as comments to this bill.

The Hawaii Supreme Court has recently (i.e., 1/23/2018) approved a court form that can be used to deal with the situation that appears to be what this bill is trying to address. Enclosed is a copy of a district court ejectment complaint that was recently approved by the Court for use by the public. Prior to the approval of this court form, the district courts were allowing use of the summary possession complaint form to remove people who were unlawfully occupying premises (residential and commercial premises) without the consent of the owner.

Thank you for the opportunity to testify on this matter.

Very truly yours,


Yuriko J. Sugimura
OF BENDET FIDELL SUGIMURA
YJS:ss
JS180048-CX.DOC

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23-JAN-2018
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IN THE SUPREME COURT OF THE STATE OF HAWAI'I

In the Matter of the
District Court Rules of Civil Procedure

ORDER AMENDING FORMS

(By: Recktenwald, C.J., Nakayama, McKenna, Pollack, and Wilson, JJ.)

IT IS HEREBY ORDERED that effective upon entry of this order, the attached Forms DC02, DC10, DC14, DC19, DC48, DC50, and DC55 are amended for use in the District Courts of the State of Hawai'i, and appended to the District Court Rules of Civil Procedure. The forms replace the prior forms bearing the same "DC" number.

IT IS FURTHER ORDERED that new Forms DC56 and DC57 are authorized to be inserted in the District Court Rules of Civil Procedure.

IT IS FURTHER ORDERED that Form DC16 is repealed and replaced with a new form, *Ex Parte Motion to Stay Execution of Writ of Possession*.

IT IS FINALLY ORDERED that the district courts are authorized to insert circuit identifiers, addresses and contact information and to publish the forms in print or electronic format.

DATED: Honolulu, Hawai'i, January 23, 2018.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Sabrina S. McKenna

/s/ Richard W. Pollack

/s/ Michael D. Wilson



IN THE DISTRICT COURT OF THE _____ CIRCUIT
_____ DIVISION
STATE OF HAWAI'I

Plaintiff

Reserved for Court Use

Civil No.

Defendant

Filing Party/Attorney Name, Attorney Number, Firm Name (if applicable), Address, and Telephone Number

Premises Address:

COMPLAINT FOR EJECTION

1. This Court has jurisdiction over this matter and venue is proper.
2. The premises is located in this division of this Court.
3. Plaintiff is the owner or the agent for the owner of the premises.
4. Defendant is in possession of the premises without legal authority or permission.
5. If title was obtained through a non-judicial foreclosure action:
 - Plaintiff did not initiate the non-judicial foreclosure action.
 - Plaintiff did initiate the non-judicial foreclosure action and acquired title at auction as the highest bidder. Plaintiff asserts that the sale of the property was conducted in a manner that was fair, reasonably diligent, in good faith, and the price at auction was an adequate price.
6. If a written notice to vacate was given to Defendant a copy is attached.
7. The Servicemembers Civil Relief Act, 50 U.S.C. App §501 may apply to a Defendant who is classified active duty as defined in the Act. Please check all that apply.
 - To the best of my knowledge, the Defendant is not a member of the military.
 - The following Defendant is an active duty member of the military. Name _____.
 - I am unable to determine whether the Defendant is an active duty member of the military. Please attach a separate page indicating what attempts were made to determine Defendant's military status.

SEE PAGE 2

I certify that this is a full, true and correct
copy of the original on file in this office.

Clerk, District Court of the above Circuit, State of Hawai'i

COMPLAINT (continued)

Plaintiff is asking the Court for the following:

A. A Judgment giving Plaintiff possession of the premises.

B. A Writ of Possession directing the Sheriff or serving officer to:

1. Remove Defendant from the premises and all persons possessing the premises through Defendant;
2. Remove from the premises all personal belongings of Defendant and of any other person; and
3. Put Plaintiff in possession of the premises.

C. Judgment against Defendant for \$ _____.

In addition, the Court may award other damages, court costs, interest, and reasonable attorney's fees, as allowed by statute.

Date:	Signature of Plaintiff/Attorney: Print/Type Name:
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DECLARATION

I DECLARE UNDER PENALTY OF LAW THAT WHAT IS STATED IN THE COMPLAINT IS TRUE AND CORRECT.

Date:	Signature of Declarant: Print/Type Name:
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In accordance with the Americans with Disabilities Act and other applicable state and federal laws, if you require an accommodation for a disability when working with a court program, service, or activity, please contact the District Court Administration Office at PHONE NO. _____, FAX _____, or TTY _____ at least ten (10) working days before your proceeding, hearing, or appointment date.
For Civil-related matters, please call _____ or visit the District Court Service Center at _____.