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HOUSE COMMITTEE ON HOUSING

Rep. Tom Brower, Chair

Rep. Scot Z. Matayoshi, Vice Chair

Re: HBI822 – RELATING TO HOUSING

Dear Representatives:

I am an attorney who practices in the field of landlord/tenant law, including residential matters and am writing in opposition to the above-referenced bill.

It seems that this bill is seeking to give tenants two weeks to apply for rapid rehousing or shallow rent subsidy funds after a court has already terminated their tenancy due to nonpayment.

It is important to understand that the eviction process generally takes a month or more before a writ of possession is issued by the court. From the time a tenant cannot pay rent, Hawaii law provides the tenant with at least one week's notice before a landlord can start an eviction lawsuit. After that, the court process will not begin until at least one week after the tenant is served with the eviction papers. If the tenant follows the court procedures and appears in court to contest the eviction the actual time before a writ of possession is issued will typically be two more weeks.

There is no reason that the tenant cannot apply for aid when the eviction process starts. If the legislature is concerned that tenants do not know about the programs or need to be encouraged to apply, **the legislature should consider making changes to HRS 521-68, the statute that requires the initial notice to the tenant of the delinquency.** The statute could require landlords to provide appropriate notice of the availability of assistance. This would be a better approach because, if a tenant can get assistance early enough, an eviction lawsuit can be avoided entirely – which will benefit everyone but the lawyers.

The language of the bill is also impractical because it makes it impossible for a landlord to ever evict a tenant without paying them their security deposit, which defeats the purpose of the security deposit law. At the end of any tenancy, Hawaii's laws allow the landlord at least 14 days to return the security deposit. This is to allow the landlord the opportunity to inspect the premises and obtain proposals for repair and cleaning costs in order to properly dispose of the security deposit. See HRS 521-44. In an eviction for nonpayment, the landlord has not received money for rent, and is almost always entitled to keep the entire security deposit pursuant to HRS 521-44.

The bill, however, flips that and will require the landlord to pay the security deposit to the tenant before the landlord ever has a chance to see the inside of the premises. It would also

require that the landlord pay the tenant while the tenant still owes the landlord rent. This seems particularly unfair to a landlord who has operated in good faith.

The two week delay called for in the bill is also very costly. As you know, rental rates in Hawaii are very high and this bill effectively gives all tenants who are being evicted two weeks free occupancy. This cost will be transferred by landlords to other tenants through higher rent, which will cause rents for everyone to rise.

Finally, this bill assumes that tenants will both apply and qualify for aid, and that aid is available. If, for example, an executive with gambling debts does not pay his rent on a mansion in Kahala, he would likely not be eligible for aid and this bill would simply cause further loss to the landlord. And even if money is available to the tenant, there is no obligation on the part of the landlord to allow the tenant to stay once the writ has been issued.

Please let me know if you have any questions.

Very truly yours,

/s/ David Chee

David W.H. Chee, Esq.