
March 4, 2021

The Honorable Mark Nakashima, Chair
House Committee on Judiciary and Hawaiian Affairs
Via Videoconference

RE: House Bill 391, HD2, Relating to the Residential Landlord-Tenant Code

HEARING: Thursday, March 4, 2021, at 2:00 p.m.

Aloha Chair Nakashima, Vice Chair Matayoshi, and Members of the Committee,

I am Tracy Leverone, Member of the Government Affairs Committee, testifying on behalf of the Hawai'i Association of REALTORS® (“HAR”), the voice of real estate in Hawai'i, and its over 10,000 members. HAR **provides comments** on House Bill 391, HD2, which establishes a process for the early termination of a rental agreement for certain active duty servicemembers who receive military orders to vacate civilian housing and move into on-post government quarters; become eligible to live in on-post government quarters and failure to move into on-post government quarters will result in a forfeiture of basic allowance for housing; or die while serving on active duty.

Hawai'i REALTORS® appreciates our servicemembers and their service to our country. Under current federal law, the Servicemembers Civil Relief Act (“SCRA”) already provides legal protections for a servicemember to cancel a Rental Agreement, which includes being deployed or if a servicemember unfortunately dies while in military service.

This measure provides that the Rental Agreement may be void when a service member receives military orders to vacate civilian housing and move into on-post government quarters with a written verification signed by the servicemember tenant's commanding officer. When a service member is on a waiting list for on-base housing, that service member should communicate that with their housing provider, so that they may negotiate month-to-month rental agreement terms. Alternatively, military housing offices in other States allow a servicemember to keep their place in the housing queue should a unit become available, allowing the servicemember the ability to honor the terms of an existing fixed-term rental agreement. This may be an option in Hawai'i as well.

As such, HAR believes this measure is very broad and may have the unintended consequence of discouraging renting to our military knowing that they could void the Rental Agreement upon receiving on-base housing.

If the Committee is inclined to pass this measure, we would respectfully request a November 1st date. This would allow HAR to make amendments to the Rental Agreement and educate our members on the new provisions.

Mahalo for the opportunity to testify.

HB-391-HD-2

Submitted on: 3/2/2021 2:52:55 PM

Testimony for JHA on 3/4/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Levi K. Hookano	Individual	Support	No

Comments:

I am testifying in strong support of HB391. I am testifying in my personal capacity and my views do not reflect the position of the Army or the United States Army Judge Advocate General's Corps. I support this committee making the following amendments to HB391 HD2:

1. Amending HB391 HD2, to address landlord concerns that a Servicemember could use this bill to terminate a lease for any reason to move on post. This bill should focus on assisting those Servicemembers who must break an off-post lease because they can no longer afford the rent due to losing their housing allowance. A possible fix could be amending with the following language under sections (a) and (b):

(1) Receives military orders requiring the servicemember tenant to vacate civilian housing and move into on-post government quarters; or and

(2) ~~Becomes eligible to live in on-post government quarters and failure~~
Failure to move into on-post government quarters will result in a forfeiture of the tenant's basic allowance for housing;

The reasons why it is important for a Servicemember to be allowed to break an off-post lease if they will lose housing allowance are outlined below.

2. Additionally, paragraph (d), allowing termination of a lease by a deceased Servicemember's family member, should be amended to include a deceased Servicemember's personal representative, if there is a will. Although the Servicemembers Civil Relief Act (SCRA) includes a provision that allows the spouse of a deceased Servicemember to terminate a residential lease, it does not allow for any other family member or a personal representative to do so. Specifically, the SCRA states: "The spouse of the lessee on a lease described in subsection (b) may terminate the lease during the one-year period beginning on the date of the death of the lessee...." 50 USC §3955(a)(3). It should also be noted that the SCRA allows a spouse to terminate a residential lease if a Servicemember suffers catastrophic illness or injury.

The greatest beneficiaries of this bill will be our junior enlisted Servicemembers, who are the most vulnerable military population. Passing this bill will help them to focus on their mission to fight and win the nation's wars, instead of focusing on how they will

make rent on a home they can no longer afford while still paying for necessities and prevent unnecessary troubles for both the Servicemember and landlord. Similar laws are already on the books in Florida, Georgia, and Washington.

The most common situation where a Servicemember will need to terminate a lease early under this bill is when a junior enlisted Servicemember gets divorced and must move into the barracks. From 2015 – 2020, the Schofield Barracks Legal Assistance Office assisted more than 1,950 Servicemembers and dependents, in the grades of E1-E5, with divorce or separation related matters. In the event of a divorce where these Servicemembers no longer have any dependents, or they do not get physical custody of any children, they will be required to move into the barracks, regardless of any valid lease that is signed. Unless an exception to policy is granted by the command, the Servicemember will lose their housing allowance and will likely not be able to afford their rent and necessary living expenses.

This bill ensures that Servicemembers will not have to face evictions or serious financial hardship if they are no longer eligible for basic housing allowance. A junior enlisted Servicemember, in the grades of E1-E5 with less than 4 years of service in the military, has base pay ranging from \$1,785 - \$2,844/month (CY2021). According to Zillow, the average rent in Honolulu is \$2,349. These Servicemembers will face intense financial struggles if forced to pay penalties or remain in the home for the duration of their lease.

The penalties for early termination of a lease can be significant and is a lose-lose situation for Servicemembers and landlords. Under the current landlord tenant code, the tenant shall be liable to the landlord for the lesser of the following amounts for vacating the home before the lease is over:

- (1) The entire rent due for the remainder of the term; or
- (2) All rent accrued during the period reasonably necessary to re-rent the dwelling unit at the fair rental, plus the difference between such fair rent and the rent agreed to in the prior rental agreement and a reasonable commission for the renting of the dwelling unit.

A landlord would have a tenant that is unable to pay the rent, or any penalties, and have to go through the trouble and additional costs to either evict or go through collections on these Servicemembers. The Servicemember would take a significant hit to their finances and credit, which could adversely affect their career, especially if they hold a security clearance. The time, efforts, costs, and impacts of this situation will result in a lose-lose situation.

It is for these reasons that I strongly urge this committee to recommend moving HB391 forward with amendments. Mahalo for all of your time and commitment to Hawaii.

Sincerely,

Levi K. Hookano

HB-391-HD-2

Submitted on: 3/2/2021 5:56:55 PM

Testimony for JHA on 3/4/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Sara Jarman	Individual	Support	No

Comments:

As a lawyer, who has worked on several cases where junior enlisted soldiers were not able to terminate their leases, but were ordered back to the barracks, HB 391 would help these soldiers tremendously. Currently, if a junior enlisted soldier gets divorced for example, or has another issue come up and is required to go back the barracks he/she doesnt have a legal justification to terminate their lease. I have seen several cases where a junior enlisted soldier is paying for a home or apartment he/she no longer lives in, while no longer recieving BAH or housing support yet living in the barracks under orders. This has placed several of my former clients in precarious financial situations, resulting in one case of bankruptcy. If HB 391 doesnt succeed these soldiers will continue to face dire financial situations, as they will either have to choose to disobey orders and not face financial difficulty or obey orders and struggle.

HB-391-HD-2

Submitted on: 3/2/2021 8:24:41 PM

Testimony for JHA on 3/4/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Tiari VenturaGrande	Individual	Support	No

Comments:

I support this because I have watched Soldiers struggle through this situation on many occasions. Soldiers that divorce are the hardest hit but here in Hawaii, barracks spaces are filled fairly quick. Needless to say, the barracks are protected so they go through maintenance every several years. The barracks are not the greatest because you can't make an old building new and oftentimes rooms are closed because of maintenance. This forces Soldiers to have to move off post and they are required to renew their application to stay in their off post home, annually. Although I've never seen one denied (I have only been aware of this for 4 months) it is a predicament they are faced with. One of the challenges that they would face is the furniture they accumulated while they were off post. They would be forced to sell it or store it which is more time and money wasted for these Soldiers.

HB-391-HD-2

Submitted on: 3/3/2021 9:18:50 AM

Testimony for JHA on 3/4/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Allison Baird	Individual	Support	No

Comments:

I support this measure

HB-391-HD-2

Submitted on: 3/3/2021 12:14:40 PM

Testimony for JHA on 3/4/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Cassandra Chang	Individual	Support	No

Comments:

I am testifying in support of HB391. I am testifying in my personal capacity and not on behalf of any organization.

When you think about this bill, please think about the young military service members that it will greatly help.

Currently, we have service members who have received permission and housing allowance to lease a home off-base and in town. Before the expiration of their lease, they are unexpectedly ordered to return to the on-base barracks. Their housing allowance to cover their off-base lease is discontinued even though their lease obligations remain. The service members are held responsible for paying for a home that they no longer reside in and that they no longer have the funds to cover. This creates a significant financial hardship on members and an enormous stress that can distract from their warfighting responsibilities.

This bill will directly help service members who are placed in a difficult situation of having to follow military orders while also fulfilling lease terms. Many service members absorb the stress of frequent moves, shifting environments, and distance from loved ones. This bill will make sure that lease obligations that conflict with a commander's orders will not be an additional stress for members to bear.

Thank you for your time and consideration of this matter.

HB-391-HD-2

Submitted on: 3/3/2021 12:34:55 PM

Testimony for JHA on 3/4/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Kaikea K. Blakemore	Individual	Support	No

Comments:

Support

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March 3, 2021

HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS

Rep. Mark M. Nakashima, Chair

Rep. Scot Z. Matayoshi, Vice Chair

Re: HB 391, HD 2 - RELATING TO THE RESIDENTIAL LANDLORD-TENANT CODE

Dear Representatives:

I previously submitted testimony on this bill when it was before the Committee on Consumer Protection & Commerce and am writing to supplement my prior comments.

As you can appreciate, any modification of the law will result in both intended and unintended consequences. This proposed modification is designed to give additional financial and convenience advantages to servicemembers who engage in residential leases. These advantages, however, come at the expense of the Hawaii residents who rent homes to servicemembers.

Like all contracts, once a landlord and tenant enter into a rental agreement, they are generally bound by its terms. This legislation would allow servicemembers to break their contract to rent a premises for a specified term, without penalty, on either 15 or 30 days' notice.

For a landlord, once a tenant executes a lease for a set term, they expect the tenant to fulfill the agreement and they rely on the promise that they will receive rent for the term of the lease. When this promise is not kept, the results can be costly for a landlord. Finding a new tenant to take over the lease can be a time consuming and expensive task. In order to get a unit re-rented, a landlord needs to clean and repair any damage left by the preceding tenant, advertise the unit, review applications, expend the cost to run criminal and credit checks and pay any leasing commissions that are incurred. If this process cannot be completed quickly, a landlord loses rent during the time the unit sits vacant. The law currently allows a landlord to recover these losses from a tenant that has broken their lease by departing early.

This proposed legislation would allow a servicemember to provide very little notice of their departure to a landlord and would require a landlord to assume all financial losses related to the contract not being fulfilled. The foreseeable consequence of this bill is that any landlord who rents to a servicemember takes on additional risks of loss created by this bill. This will make it less attractive for Hawaii property owners to lease residential properties to servicemembers. To the extent that a landlord does not want to assume that financial risk, it may be more difficult for servicemembers to find housing.

Further, if a landlord is willing to rent to a servicemember, I expect that they will adjust the rent and terms to account for the additional risks and costs created by this bill – so, instead of

Rep. Mark M. Nakashima, Chair
Rep. Scot Z. Matayoshi, Vice Chair
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offering a lower rent for a longer term, I expect rental rates to be higher to account for the potentially shorter time to recoup renting costs. I also expect landlords to trend towards short-term leases, or month-to-month leases, instead of long-term rental agreements. That will potentially cause housing instability for servicemembers who plan to live here for the long term.

More study is necessary before the State of Hawaii changes its laws. This proposed legislation will result in difficult consequences for many landlords and for servicemembers and their families. A proper evaluation of the costs and benefits should occur before passing this bill.

Thank you for the opportunity to submit testimony on this Bill.

Very truly yours,

/s/ David Chee

David W.H. Chee