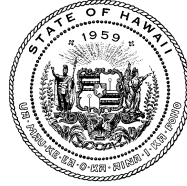


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To: The Honorable Karl Rhoads, Chair;
The Honorable Jarrett Keohokalole, Vice Chair;
and Members of the Senate Committee on Judiciary

From: Isaac W. Choy, Director
Department of Taxation

Date: February 9, 2021
Time: 9:15 A.M.
Place: Via Video Conference, State Capitol

Re: S.B. 148, Relating to Taxation

The Department of Taxation (Department) offers the following comments S.B. 148 for the Committee's consideration.

S.B. 148 Requires certain landlords, lessors, or plaintiffs in a summary possession action to provide proof of payment of taxes due to the State as a condition of the issuance of a writ of possession.

The Department notes that it is unclear whether the inclusion of transient accommodations tax (TAT) on line 10 of page 2 was intentional as TAT only applies to short term rentals. If this inclusion was inadvertent, the Departments suggests deleting the reference to TAT.

The Department also notes that a tax clearance indicates general compliance with the applicable tax laws and is not specific as to a tax type, such as general excise tax (GET). The Department is able to provide copies of GET returns that are filed, however, it is important to remember that tax returns will indicate the amount of income reported and the amount of tax owed, but would not indicate the actual source of income. For example, if a landlord leases 3 units at \$1,000 per month and reports \$24,000 for the year, there is an underreporting of \$12,000. From the GET return itself, we would not know specifically which income was not reported.

Thank you for the opportunity to provide comments.

February 9, 2021

The Honorable Karl Rhoads, Chair
Senate Committee on Judiciary
Via Videoconference

RE: S.B. 148 Relating to Taxation

HEARING: Tuesday, February 9, 2021, at 9:15 a.m.

Aloha Chair Rhoads, Vice Chair Keohokalole, and Members of the Committee,

I am Ken Hiraki, Director of Government Affairs, 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 **opposes** Senate Bill 148, which requires certain landlords, lessors, or plaintiffs in a summary possession action to provide proof of payment of taxes due to the State as a condition of the issuance of a writ of possession.

While HAR believes that everyone should pay their taxes, a tax clearance should remain separate from a summary possession hearing. There are situations where eviction is due to health and safety concerns. Tenants could be threatening the safety and health of others in a household or damaging the property. In those situations, if a housing provider would need to first get a tax clearance and work out their taxation issues before being able to evict, this could put their own health and safety at risk.

Mahalo for the opportunity to testify.

LATE

SB-148

Submitted on: 2/8/2021 6:37:35 PM

Testimony for JDC on 2/9/2021 9:15:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
John Honda	Individual	Support	No

Comments:

[Evicted in Hawaii Report.indd \(hubspot.net\)](https://cdn2.hubspot.net/hubfs/4408380/PDF/Eviction-Reports-Articles-Cities-States/Hawaii_Evicted-in-Hawaii-Report_DEC6_Update.pdf)

https://cdn2.hubspot.net/hubfs/4408380/PDF/Eviction-Reports-Articles-Cities-States/Hawaii_Evicted-in-Hawaii-Report_DEC6_Update.pdf

"SAFE, STABLE HOUSING provides a foundation for building a successful life—a foundation that can quickly crumble because of an improper eviction. The absence of housing stability increases the likelihood of homelessness, domestic violence, adverse impacts on health, and depressed educational outcomes. These consequences perpetuate generational cycles of poverty and give rise to serious social costs. Despite the heavy toll that eviction takes on households and communities, tenants facing eviction in Hawai'i have relatively little support to ensure they are not improperly removed from their homes. Evictions are conducted much more quickly than a typical court case through a process known as "summary possession." This streamlined process is designed to quickly return possession of housing units to landlords. In theory, summary possession proceeds according to certain rules that level the playing field between landlords and tenants. However, the proceedings are only fair to the extent that the parties involved understand the rules. A party with superior knowledge of the process gains a great advantage, creating a power imbalance. In Hawai'i, landlords almost always have the advantage. The majority of landlords are represented by legal counsel who can guide them through the process, and many other landlords appear through highly knowledgeable professional agents. Meanwhile, the percentage of represented tenants is close to nil. It is therefore unsurprising that landlords regain possession in almost every case: various studies indicate that unrepresented tenants are highly unlikely to win in court.¹ Certainly, in many cases, landlords prevail because there was adequate cause for eviction. However, it is more often the case that tenants do not fully understand the proceedings and cannot effectively advocate for themselves. In the frequent instances in which a tenant fails to respond to an eviction summons, a default judgment is entered in favor of the landlord. During three separate study periods spanning eight years, Lawyers for Equal Justice (LEJ) examined evictions in Hawai'i. The results of the study in all three periods confirm the existence of a stark disparity in legal representation between landlords and tenants, and a resulting disparity in case outcomes. Approximately 70 percent of landlords are represented by counsel,² as opposed to 5 percent of tenants. About half of all eviction cases result in default judgment for the landlord due to the tenant's failure to appear in court. Unsurprisingly, eviction is the final outcome in 85 to 95 percent of cases.

...

Establish Prima Facie Requirements for a Valid Summary Possession Filing Owners of rental properties are required to pay a General Excise Tax (“GET”) on rent received; however, some landlords illegally rent properties without paying taxes. Others attempt to force tenants out without providing them with the required warnings.

Recommendation: Hawai‘i’s Landlord-Tenant Code should clearly set forth the prima facie elements needed to support an eviction filing, including proof of ownership, GET compliance, and fulfillment of notice requirements. Courts should specifically determine that each of these elements has been established before awarding possession to a landlord, even where tenants fail to appear. This remedy would serve the dual purpose of encouraging tax code compliance and discouraging frivolous and illegal eviction efforts by landlords who don’t care to respect their tenants’ rights. Landlords who use the taxpayer-funded court system to evict tenants should be required to prove they are complying with their tax-related obligations.