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GOVERNOR OF
HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

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**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the Senate Committee on
WATER AND LAND**

**Wednesday, February 9, 2022
1:00 PM**

State Capitol, Conference Room 229 & Videoconference

**In consideration of
SENATE BILL 2217
RELATING TO REAL PROPERTY**

Senate Bill 2217 proposes to establish procedures to remove certain unlawful covenants and conditions from recorded conveyance instruments. These unlawful covenants are already void under Section 515-6(a), Hawaii Revised Statutes, and Senate Bill 2217 adds paperwork and ambiguity that may undermine its intended outcome. **The Department of Land and Natural Resources (Department) opposes this measure as written since the process, expertise, responsibilities, and actions required are not clear.**

This bill proposes to remove these unlawful covenants through a template form that the Department's Bureau of Conveyances (BOC) is directed to create. First, as these unlawful covenants can take any number of forms, it would be nearly impossible for a template form to be created that would effectively "remove from conveyance instruments any covenants and conditions that are prohibited by this section" (page 5, line 2-4) in the proper way. Disputes would arise over the form, content and the legal effect of the resulting instrument as modified by the template form.

With two systems of recording in Hawaii, the more complex Land Court Recording System would have further challenges where this template form would specify changes to the recorded document, without indicating the specific entry to be noted on the Transfer Certificate of Title to remove the unlawful covenant. Upon any subsequent conveyance, the BOC would have to interpret which encumbrance or covenants to note on the subsequent Transfer Certificate of Title.

Secondly, without the necessary legal expertise to word this template properly for both systems of recording, the potential for questions to arise from the submitter is very likely, and these will be directed to the BOC who does not have the legal expertise or resources to respond

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

appropriately. The bill also proposes to require the form to have a space for the Department of the Attorney General (AG) to indicate its approval of the requested removal of unlawful covenant with no provisions for how the submitter is to get the completed form to the AG and how subsequent processing or communications shall be coordinated. The proposed outcome and remedy of this unlawful covenant template form, if approved by the AG's will be to record it at no fee. Without the identified flow and accountability structure, and without clarity as to how it will ultimately be returned to the BOC, it is not likely that this process will be completed as intended. With the bill silent to this important coordination requirement, the BOC will likely become the default coordinator without the proper resources to commit for the successful start-to-finish completion.

Lastly, the unlawful covenant removal form that is reviewed and approved by the AG then recorded with the BOC "shall remove the unlawful covenant from all property affected by the original covenant, regardless of who submits the modification" (page 6, line 21 to page 7, line 1-2). In both the Regular System and the Land Court System, it will be nearly impossible to identify all property affected by said unlawful covenant, and nearly impossible to ensure the removal is applied in a manner that will have the proper legal effect.

Thank you for your strong consideration of our testimony and the concerns raised with the lack of resources and expertise on the part of the BOC to support the goals of this through the process described in this bill.

Thank you for the opportunity to comment on this measure.

Presentation to The
The Committee On Water and Land
Wednesday, February 9, 2022, 1:00 PM
State Capitol Conference Room 229 & Videoconference

Testimony on SB 2217 In Opposition

TO: The Honorable Lorraine R. Inouye
The Honorable Gilbert S.C. Keith-Agaran
Members of the Committee

My name is Neal K. Okabayashi, Executive Director of the Hawaii Bankers Association (HBA). HBA represents seven Hawai'i banks and three banks from the continent with branches in Hawai'i.

The concept behind this bill is quite worthwhile but it is not necessary as the concept is already law and would cause needless work for the Attorney General. For that reason, HBA opposes this bill.

Sections 515-6(a) and (b) lists unlawful conveyances, oral or written, and specifically states they are void.

Section 515-6(a) and (b) reads as follows:

(a) Every provision in an oral agreement or a written instrument relating to real property that purports to forbid or restrict the conveyance, encumbrance, occupancy, or lease thereof to individuals because of race, sex, including gender identity or expression, sexual orientation, color, religion, marital status, familial status, ancestry, disability, age, or human immunodeficiency virus infection, is **void**.

(b) Every condition, restriction, or prohibition, including a right of entry or possibility of reverter, that directly or indirectly limits the use or occupancy of real property on the basis of race, sex, including gender identity or expression, sexual orientation, color, religion, marital status, familial status, ancestry, disability, age, or human immunodeficiency virus infection is **void**, except a limitation, on the basis of religion, on the use of real property held by a religious institution or organization or by a religious or charitable organization operated, supervised, or controlled by a religious institution or organization, and used for religious or charitable purposes.

Marked in bold is the word "void" to emphasize that the concept is already in our laws.

Thus, there is no need for this bill which allows for the executive branch (Department of Attorney General) taking on a procedure which is really a judicial function.

Given that the Bureau of Conveyances was formed in 1859 and the Land Court was formed in 1903, there may be a plethora of conveyances that are already void due to law potentially causing a flood of unnecessary cases seeking to void already void unlawful restrictions and covenants.

If anything, thought should be given that Section 515-(6) (b) should include another exemption, besides the religious exemption, for conveyances made under the Hawaiian Homes Commission Act (“Act”) unless that is already provided for in the Act.

Thank you for the opportunity to submit this testimony in opposition on SB 2271. Please let us know if we can provide further information.

Neal K. Okabayashi
524-5161



Testimony to the Senate Committee on Commerce and Consumer Protection
Wednesday, February 9, 2022
1:00 pm
Via Videoconference

Testimony in Opposition to SB 2217, Relating to Real Property

To: The Honorable Rosalyn Baker, Chair
The Honorable Stanley Chang, Vice-Chair
Members of the Committees

My name is Stefanie Sakamoto, and I am testifying on behalf of the Hawaii Credit Union League, the local trade association for 48 Hawaii credit unions, representing over 860,000 credit union members across the state.

HCUL is in opposition to SB 2217, Relating to Real Property. This bill would establish a procedure to remove unlawful covenants and conditions from recorded conveyance documents.

While we understand the intent of the legislation, we are in opposition because this would be unenforceable. The majority of Hawaii's credit unions offer mortgages, which would be subject to this potential law, and the regulatory burden could be severe.

Thank you for the opportunity to provide comments on this issue.