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February 4, 2022

The Honorable Rosalyn H. Baker, Chair

Senate Committee on Commerce & Consumer Protection
Via Videoconference

RE: Senate Bill 3326, Relating to Tenant Rights

HEARING: Friday, February 4, 2022, at 9:30 a.m.

Aloha Chair Baker, Vice Chair Chang, 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 10,800 members. HAR **strongly opposes** Senate Bill 3326, which establishes a penalty for landlord violations of the residential landlord-tenant code. Establishes minimum notice requirements for landlords terminating rental agreements. Limits the allowable amount for landlord rent increases annually. Requires landlords to pay tenants when terminating or refusing to renew a rental agreement.

HAR believes limiting rent increases does nothing to increase the supply of rental housing and, ultimately, increasing supply is the true long-term solution to Hawaii's rental housing shortage. Legislating price caps will likely lead to unintended consequences reminiscent of what Hawai'i experienced with the gas cap law. Rent control discourages the construction of more rental units making the problem even worse. Unless a rent control law permits a fair rate of return over time, housing providers may not be able to maintain their units.

Additionally, according to 2019 Census data, 39.8% of households are renters in Hawai'i. Not everyone is able to afford to purchase a home and Hawai'i needs rental units. This measure would require a housing provider to pay a tenant should they not renew a Rental Agreement of up to three months rent and based on the number of years the tenant was in the unit. A Rental Agreement is a private contract between two parties and there are numerous reasons a housing provider would not renew a Rental Agreement, such as selling the property due to financial difficulties or needing to move back into the unit. As such, an unintended consequence of this measure is it discourages housing providers from renting a property, thereby increasing rental housing costs due to lack of supply.

For the foregoing reasons, we respectfully request that this measure be held. Mahalo for the opportunity to testify.

HAWAII LEGISLATIVE
ACTION COMMITTEE


community
ASSOCIATIONS INSTITUTE

P.O. Box 976
Honolulu, Hawaii 96808

Testimony Regarding SB 3326

Date: Friday, February 4, 2022

Time: 9:30 am

Place: Conference Room 229 and via video conference

Chair Baker and Vice Chair Chang,

My name is Michael Ayson and I am testifying on behalf of the Legislative Action Committee of The Community Associations Institute, Hawaii Chapter ("CAI"). CAI is a national organization devoted to improving the management and operation of condominium and other homeowner associations. The Hawaii chapter is a local chapter of the national organization. CAI strives to foster harmonious community associations.

CAI opposes SB3326.

Very truly yours,



Michael Ayson

SB-3326

Submitted on: 2/1/2022 11:15:44 AM

Testimony for CPN on 2/4/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
R Laree McGuire	Individual	Oppose	No

Comments:

Strongly oppose; not in favor of rent control measures nor of requiring landlords to pay tenants when seeking to terminate a lease. As the owner of a property, the landlord should be able to terminate when the lease term is up or when a tenant has violated the terms of the lease w/o having to pay the tenant. There are numerous valid reasons why a landlord may need to terminate a lease and the landlord should not be penalized for doing so. If this law is passed, it will have the effect of discouraging property owners from renting out their units to others.

DAVID W.H. CHEE

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February 3, 2022

COMMITTEE ON COMMERCE AND CONSUMER PROTECTION
Senator Rosalyn H. Baker, Chair
Senator Stanley Chang, Vice Chair

RE: SB3326- RELATING TO TENANTS RIGHTS

I. Introduction

I am an attorney and have practiced landlord-tenant law for the last 29 years.

The views I bring on this proposed legislation comes from a lifetime of involvement in rental housing. When I was in middle school in the late 1970's, my parents bought a house to use as a rental. They bought the fixer-upper house thinking that real estate prices in Hawaii were rising so fast that, if they didn't buy something, their kids would not have any chance to buy a home of their own when they got married. They wanted their children to have a chance to live in Hawaii, and this was a big part of their plan.

My parents were both civil servants, so to help pay the mortgage on the house, they rented it out. My parents did their own everything for the house – from fixing up the house to make it ready for tenants, to advertising it and showing it. They selected the tenants based on face-to-face meetings. My dad got to be really good at doing all kinds of home repairs, including roofing, painting, and plumbing. I learned at his side as I was voluntold to help. Every weekend, and on some weeknights, we would be cleaning the yard, fixing plumbing, or painting.

Eventually, one rental home became two as my parents earned equity in the first home. Then they bought a third. As this was going on, I asked my parents why they were doing this very hard work. My father told me that he had tried other investments, but that he had no control over how those investments did. He liked providing rental housing because, if he kept the tenants happy and kept the properties maintained, he knew that he could keep a steady income with which to build equity in the properties and meet our family's needs. The rental properties put three kids through college and grad school and became the cornerstone of my parents' retirement plan. And they liked providing quality homes to people they considered friends.

The rental properties went from being an experiment and turned into a full-time job. When my dad retired, his friends gave him power tools because everyone knew that he was going to spend his retirement fixing the homes he was providing.

For them, the most stressful time was when a tenant let them know that they would be moving, because that meant that they would need to spend the time, energy, and money to fix any wear and tear, advertise, and search for a new tenant. As they were making repairs and looking for a

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new tenant, the unit would sit empty, and they would have no income. Having a tenant leave was always bad news. That is why they were hesitant to raise the rent – they did not want to lose good tenants.

To my knowledge, in the 40+ years they were housing providers, my parents evicted two tenants for not paying the rent and asked another to leave because my sister needed a place to live.

In my own 29 years of practicing law and working with tenants and housing providers, this is what I have learned - housing providers do not want to end the tenancies of good tenants. As discussed above, getting a property ready for a new tenant, and finding that new tenant can be expensive and time consuming. Housing providers have an even bigger disincentive to actually evict tenants because then – on top of all of the other expenses – they either have to go to court or hire a lawyer to do it for them. Each eviction represents a loss – a business failure.

So, this is the perspective I bring – housing providers are not villains. They are generally good, honest hard-working people whose job is to provide homes to others. The relationships between housing providers and tenants are rarely antagonistic, and housing providers want to keep their tenants happy so that they stay. Successful housing providers have happy relationships with their tenants, each giving the other what they need.

Housing providers resort to eviction only rarely. In my own practice, about 90% of the evictions are due to nonpayment of rent. The vast majority of the other 10% of evictions are normally due to behavior issues (noise, violence, hoarding, etc.). It is rare to see an eviction for any other reason.

Finally, I know also that tenants are just like the housing providers. Most are hard-working, honest people who pay their bills. The tenants I see when I am working on an eviction are usually eager to find a way to fulfill their obligations and stay in their homes. What I like about my job is that I get to help housing providers and their tenants find ways to solve their problems and save tenancies.

I am not a lobbyist – no one is paying me for my testimony.

II. SB3326

This bill is problematic in many ways.

A. Section 2 - Penalty

In Section 2, the bill proposes to penalize housing providers three times the rent for every violation of the Hawaii Residential Landlord Tenant code. Hawaii rents are often in excess of \$2,000 per month. Household sizes normally include two or three tenants. Under this measure, every time a housing provider violates the code under those circumstances, a housing provider would be liable for a \$6,000 penalty.

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Violating the code is not difficult. The code contains many provisions large and small, which can arguably be violated without any intentional act or neglect by a housing provider. For example, HRS 521-42(a)(2) requires housing providers to keep common areas of a multi-dwelling unit premises in a clean and safe condition. If a hurricane damages the common space – such as a playground or a pool – this legislation would require the housing provider to pay three times the rent to each tenant in the multi-dwelling unit premises. So, if a rental complex had 1,000 units, renting at \$2,000 per month, with an average of 3 tenants per unit, the housing provider would be subject to a \$6 million dollar penalty.

If a housing provider has a new roof installed and the contractor makes a mistake that allows the roof to leak, the housing provider would be penalized by having to pay the tenant three months' rent.

I suggest that, if the legislature has found any particular practices of housing providers to be a problem, that the legislature investigate the practice and determine the reason for it. If the problem is due to greed and putting profits over safety, then compensation to tenants may be reasonable. However, to have such an extreme penalty in all cases is simply not fair to housing providers.

B. Section 3 - Modifications to HRS 127A-30

The proposed modifications to HRS 127A-30 would require 30 days' notice before a housing provider could evict a tenant for a material breach of the rental agreement. Notably, this would override the Residential Landlord Tenant code's system of allowing faster terminations when the violations are more dangerous. For example, under the current law, eviction could begin immediately for a tenant who attempts to burn down his neighbor's apartment, or who violently beats his neighbor. Eviction could also begin immediately against a domestic violence perpetrator if a court ordered the perpetrator to leave the home. This proposed law would not allow a housing provider to take the obvious steps of terminating a tenancy even when failing to do so will endanger people's lives.

C. Section 4 - Modifications to HRS 521-21

This section would prevent housing providers from raising rents by more than 5% per year. This is simply unfair and does not consider the financial burdens of housing providers. As property taxes, insurance, interest, and maintenance costs go up, the housing provider should be able to adjust prices to cover costs. If a tenant wants to ensure that rents don't go up they can negotiate longer term rental agreements with their housing provider with a fixed rent.

D. Section 5 - Adoption of Act 57, but modified, to HRS 521-68

The proposed modifications to HRS 521-68 are essentially the adoption of Act 57 but modified to force housing providers to wait up to 45 days before bringing an eviction action when a tenant has not paid the rent.

Commented [SC1]:

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I helped draft Act 57, so I know something of its purpose and intent. It was designed as a method of easing our State back into normalcy after 16 months of an eviction moratorium where tenants could not be evicted if they didn't pay their rent, regardless of the reason. While the vast majority of tenants paid their rent or worked out arrangements with their housing providers, a small percentage of tenants simply stopped paying the rent. Act 57 was drafted expecting that there would be a large number of tenants who would be evicted once the moratorium ended.

One of the purposes of the act was to prevent the Judiciary from being overwhelmed by the anticipated flood of evictions. For example, pre-pandemic the Oahu District Courts handled about 2,000 eviction cases each year – which is about 167 cases per month. The fear was that, once the moratorium lifted, there would be 2,000 cases filed immediately – choking the courts. Act 57 was designed to encourage mediation as a means of avoiding eviction filings.

Ultimately, there was no flood of eviction filings. According to statistics that were shared with me by the Legal Aid Society, the number of eviction filings in the last three months of 2021 were significantly less than in a normal, pre-pandemic year. Part of that reduction is, no doubt, due to the success of Act 57.

Act 57 had some flaws, however. In particular, the notice provisions required of housing providers was very complex and difficult, especially for housing providers (like my parents) who did not have professional management. Some of those housing providers fell victim to their inability to understand the law or to understand how to upload documents to websites, as required by Act 57. I have no doubt that many eviction lawsuits were not filed simply because elderly or technologically disadvantaged housing providers could not understand how to follow the law.

If the legislature wants to adopt Act 57 on a permanent basis, it should do as Representatives Nakamura and Hashimoto did and convene a panel of persons knowledgeable on such issues to evaluate how to improve Act 57. There is no doubt that simplifying it will help both housing providers and tenants. Adopting it in this modified form will simply make permanent flaws that should be fixed.

Additionally, what I have found with tenants that have fallen behind on rent is that the larger the debt grows, the harder it is for the tenant to come up with a reasonable payment plan that they can adhere to. It is also often the filing of a lawsuit that motivates the tenant to attempt to resolve the debt. Since the proposed changes would require a housing provider to wait up to 45 days before filing a lawsuit, at least 2 months of rent, likely more, will necessarily be incurred before the filing of a lawsuit can commence. This will make it much harder to work out reasonable payment plans for both housing providers and tenants.

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E. Section 6 – Modifying HRS 521-69 from 10 to 30 days

Under this section, the legislation proposes to extend the time a tenant has to correct material noncompliance with Section 521-51 of the Landlord Tenant Code. 521-51 requires tenants to maintain their apartments in a clean and safe manner.

No doubt the author intends to be helpful to the tenant by giving the tenant more time to fix their problems. However, what this would do is make life more difficult for the tenant's neighbors.

I have seen multiple situations where tenants have created health hazards that affect their direct neighbors. From conditions that have allowed bed bug, roach, and rat infestations, to situations where tenants have had 20 dogs in a unit and refused to clean up the urine and feces, health and safety problems do not only affect the tenant who is living in it, but also the neighbors. Forcing neighbors to live with the stench and inconvenience of pest infestations for 30 days is unreasonable. If anything, the legislature should consider shortening the time period from 10 days to 7 days.

F. Section 7 – requiring housing providers to pay tenants when they leave

The rental housing business is just that – a business. If the legislature imposes an expense on housing providers, we can reasonably expect that housing providers will pass that expense along to tenants. I expect housing providers to raise rents to pay for these proposed costs.

G. Section 8 – modifying Section 521-72 from 10 to 30 days

This modification would allow tenants 30 days to correct non-monetary breaches of their rental agreement. What the author may not appreciate is that 521-72 is usually invoked by the housing provider in response to complaints from neighboring tenants.

For example, if a tenant is making excessive noise (music, parties, etc.) and disturbing the neighboring tenants, the housing provider can give a notice pursuant to 521-72. If the tenant's party goes on for more than 10 days (or if they throw another blow out more than 10 days after the notice) the housing provider can terminate the tenancy and bring peace back to the community.

Similarly, I recently had a tenant that was found to be urinating in the public areas of the housing project he resided at. Under the current law, the tenant was provided with a ten-day notice to correct the violation. What that meant practically was that the tenant could continue to urinate in public areas of the building for another ten days before his housing provider was allowed to take any further enforcement action against him. That also meant his neighbors would have to withstand random pools of urine on the walkways to their homes for another ten days. For obvious reasons, this is a flawed system.

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Under the proposed legislation, a housing provider (and the neighbors) will need to suffer through rule violations for 30 days instead of 10. This is really moving in the wrong direction if we want to provide a healthy living environment for our community.

III. Conclusion

While likely well intended, this Bill is problematic for many reasons and should not move forward.

SB-3326

Submitted on: 2/3/2022 10:48:13 AM

Testimony for CPN on 2/4/2022 9:30:00 AM

LATE

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Sarah Hofstadter	Individual	Support	No

Comments:

It is no secret that Hawai'i has a severe housing crisis. People whose ancestors lived here for generations are being forced to move to the mainland because they can no longer find housing they can afford. We are losing teachers, health care providers, and other workers with valuable skills, because they can live better for the same salary on the mainland. Families who are determined to stay often find themselves forced to cram into housing units that are too small for their numbers. Working people are living in their cars because they cannot find or afford housing.

It will take much more than just this one bill to remedy that situation. But we have a huge societal puzzle to solve, and greater protection against displacement of long-term tenants is an essential piece of that puzzle. This bill will not hurt responsible, compassionate landlords who want to do right by their tenants. It will not hurt developers who sincerely want to create affordable rentals. It will only hurt those who are seeking to profiteer from the current crisis.

I urge all legislators to support this bill as a step in the direction of fulfilling the government's duty to "provide for the general welfare" by ensuring that all members of Hawaii's working families have access to housing that is affordable and meets their needs. Housing is a human right; profiting from exorbitant rents and mistreatment of tenants is not.

LATE

SB-3326

Submitted on: 2/3/2022 5:05:40 PM

Testimony for CPN on 2/4/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Lauryn Rego	Individual	Support	No

Comments:

Chair Baker, Vice-Chair Chang, and members of the Committee,

Mahalo for the opportunity to testify in support of SB3326, an important measure that seeks to offer modest protections for Hawai'i's renters who are facing a housing nightmare.

I don't have to walk you through what has happened in the last two years. You have seen the headlines of skyrocketing home sales to cash buyers from the continent, sight unseen. The impact of this boom has manifested in multiple ways.

New owners kicked out long-term tenants. They either wanted to occupy the space, or real estate agents informed them to ask for more rent money. Existing owners terminated leases or declined to renew so they could raise the rent by hundreds if not thousands of dollars to accommodate Hawai'i's new wave of pandemic nomads, who were fleeing cities to work remotely in paradise. As a result, the population of local families living out of their cars or tents along our roadsides ballooned.

Real estate sales were one of the few legal exemptions to the eviction moratorium. I was one of those long-term tenants that had their lease terminated on a property that sold during the pandemic. The correct legal process would've been to issue a 45-day notice to vacate on the day of the transaction. Had all parties simply followed the existing law, it would've afforded me an additional month to find a new place. Every day counts in the quest to avoid living out of your car. Going from not missing a single rent payment during my entire tenancy to being so close to homelessness has been traumatizing.

The advice of the landlord-tenant hotline and other legal resources informed me of my rights; it didn't matter. Even if I won my case, I would lose. With the difficulty of securing housing, no one can afford the stigma of a landlord/tenant court case on their record.

My point is to demonstrate that even under the current laws, the power balance here is completely out of whack. Even when we are legally in the right as tenants, we are afraid to speak up or lack the resources to fight back. We are too overburdened with the housing competition, the endless searching, the pervasive (and illegal) discrimination against people with children, the application processes and fees, the packing, the move-out cleaning, the rehoming of pets, the lost wages, the saying goodbye to community, etc.

I urge our elected officials to prioritize measures that protect our renters and hopefully slow down the exodus of Hawai'i's middle-class. Let's stabilize rent and give Hawai'i's hard-working renters a modicum of grace before throwing them out into the streets. You aren't blind; you can see that this is happening to families without perfect credit, or with children, or with pets—every single day. I count myself among the lucky.

Thank you for taking public comments on a measure that the real estate industry will indeed oppose. They are complicit in the crisis at hand because their income depends upon rising rents to cover rising property values. It will take bravery to stand up to them, especially in an election year.

Mahalo for your consideration,

Lauryn Rego, 23 year Maui renter

LATE

SB-3326

Submitted on: 2/3/2022 6:11:40 PM

Testimony for CPN on 2/4/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
cheryl B.	Individual	Comments	No

Comments:

Comments only: As long time renters on O`ahu, these considerations would benefit many. We have been in our current apartment for 7 years. It is our hope to continue to stay in this place. This being said, each year we have to wait to see if the landlord will renew and how much the increase in rent if any will be. It's always a bit nervewracking to wait and see. Knowing that if the landlord raises the rent too much, we'd have to move but realizing that we could not find anywhere much cheaper these days. It's always the landlords with the power.

Thank you for your consideration.

LATE

SB-3326

Submitted on: 2/3/2022 6:19:08 PM

Testimony for CPN on 2/4/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Gretchen Losano	Individual	Support	No

Comments:

Please pass this important bill to protect tenants in Hawaii.

LATE

SB-3326

Submitted on: 2/3/2022 9:57:01 PM

Testimony for CPN on 2/4/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
sandi ioakimi	Individual	Support	No

Comments:

I support sb3326

LATE

SB-3326

Submitted on: 2/4/2022 6:17:57 AM

Testimony for CPN on 2/4/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Briana Hurley	Individual	Support	No

Comments:

I support this measure. I see a lot of my friends and neighbors being affected by rent being raised and having to find alternate housing, which is stressful for families because there is nothing else available they can afford.

Briana Rodrique,

Kurtistown, HI 96760

LATE

SB-3326

Submitted on: 2/4/2022 7:31:30 AM

Testimony for CPN on 2/4/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
shantee brown	Individual	Support	No

Comments:

i support SB3326 for reasons stated by lauryn rego in her testimony below.

Chair Baker, Vice-Chair Chang, and members of the Committee,

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New owners kicked out long-term tenants. They either wanted to occupy the space, or real estate agents informed them to ask for more rent money. Existing owners terminated leases or declined to renew so they could raise the rent by hundreds if not thousands of dollars to accommodate Hawai'i's new wave of pandemic nomads, who were fleeing cities to work remotely in paradise. As a result, the population of local families living out of their cars or tents along our roadsides ballooned.

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I urge our elected officials to prioritize measures that protect our renters and hopefully slow down the exodus of Hawai'i's middle-class. Let's stabilize rent and give Hawai'i's hard-working renters a modicum of grace before throwing them out into the streets. You aren't blind; you can see that this is happening to families without perfect credit, or with children, or with pets—every single day. I count myself among the lucky.

Thank you for taking public comments on a measure that the real estate industry will indeed oppose. They are complicit in the crisis at hand because their income depends upon rising rents to cover rising property values. It will take bravery to stand up to them, especially in an election year.

Mahalo for your consideration,

Lauryn Rego, Maui renter for 23 years