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PRESENTATION OF
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
REGULATED INDUSTRIES COMPLAINTS OFFICE

TO THE HOUSE COMMITTEE ON
CONSUMER PROTECTION & COMMERCE

TWENTY-SEVENTH STATE LEGISLATURE
REGULAR SESSION, 2013

WEDNESDAY, JANUARY 30, 2013
2:00 P.M.

TESTIMONY ON HOUSE BILL NO. 23
RELATING TO REAL ESTATE

TO THE HONORABLE ANGUS L.K. MCKELVEY, CHAIR,
AND TO THE HONORABLE DEREK S.K. KAWAKAMI, VICE CHAIR,
AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs ("Department")
appreciates the opportunity to testify on House Bill No. 23, Relating To Real Estate.
My name is Daria Loy-Goto. I am the Complaints and Enforcement Officer for the
Department's Regulated Industries Complaints Office ("RICO"). RICO offers the
following testimony in opposition to the bill.

House Bill No. 23 amends the definition of "custodian or caretaker" in §467-1, Hawaii Revised Statutes ("HRS"), to clarify that a custodian or caretaker does not include a designated agent or local contact. The bill also exempts from licensing requirements individuals who act as a designated agents or local contacts.

A real estate broker's or salesperson's license is required to (1) lease or offer to lease; (2) to rent or offer to rent; and (3) to manage or offer to manage any real estate. (§§ 467-1 and 467-7, HRS.) Under the bill, persons acting as "designated agents" or "locals contacts" could manage properties for more than a single owner without a real estate license.

The bill as drafted is confusing and we are unsure of its intent. Therefore, RICO opposes this bill, which we believe contradicts the current licensing law requiring a real estate license to lease, rent, or manage property and deprives consumers of important consumer protections afforded by chapter 467, including requirements that monies be placed in trust and prohibiting false advertising.

Thank you for this opportunity to testify on House Bill No. 23. I will be happy to answer any questions that the members of the Committee may have.

**PRESENTATION OF THE
REAL ESTATE COMMISSION**

TO THE HOUSE COMMITTEE ON
CONSUMER PROTECTION AND COMMERCE

TWENTY-SEVENTH LEGISLATURE
Regular Session of 2013

Wednesday, January 30, 2013
2:00 p.m.

TESTIMONY ON HOUSE BILL NO. 23 - RELATING TO REAL ESTATE.

TO THE HONORABLE ANGUS L. K. MCKELVEY, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Nikki Senter and I am the Chairperson of the Hawaii Real Estate Commission ("Commission"). The Commission appreciates the opportunity to present testimony on House Bill No. 23, Relating to Real Estate, and opposes this measure for the following reasons.

The Commission is unsure of the proposed amendments' intent and purpose. The current real estate licensing statute chapter 467, Hawaii Revised Statutes ("HRS"), clearly provides that all persons practicing real estate must attain a real estate license unless there is an applicable exception. One of the exceptions found in section 467-2, HRS, is the "custodian" or "caretaker" designation.

The proposed amendment appears to amend the "custodian" or "caretaker" exception to include any individual who:

- Manages, or offers to manage any real estate or the improvements thereon of which the individual is the custodian or caretaker;
- Acts as a designated agent pursuant to section 521-43(f); or
- Acts as a local contact pursuant to Act 326, Session Laws of Hawaii 2012.

This measure then further excludes the same exception from the definition of a "custodian" or "caretaker," found in section 467-1, HRS, for any individual who:

- Manages or offers to manage any real estate for more than a single owner;
- Acts as a designated agent pursuant to section 521-43(f); or
- Acts as a local contact pursuant to Act 326, Session Laws of Hawaii 2012.

By providing an exception and then removing the exception from the definition, this proposed measure basically negates itself. The proposed amendments, therefore, are unnecessary.

The Commission provides further opposition as this measure attempts to have two areas not regulated by the Commission to be regulated: a chapter 521, HRS, designated agent; and a chapter 237, HRS, local contact. Section 26H-6, HRS, requires that new regulatory measures being considered for enactment be referred to the Auditor for a sunrise analysis. The statute further requires that the analysis shall set forth the probable effects of regulation, assess whether its enactment is consistent with the legislative policies of the Hawaii Regulatory Licensing Reform Act, and assess alternative forms of regulation.

For the aforementioned reasons, the Commission opposes House Bill No. 23.
Thank you for the opportunity to testify.

January 30, 2013

The Honorable Angus L.K. McKelvey, Chair
House Committee on Consumer Protection & Commerce
State Capitol, Room 325
Honolulu, Hawaii 96813

RE: H.B. 23, Relating to Real Estate

HEARING: Wednesday, January 30, 2013 at 2:00 p.m.

Aloha Chair McKelvey, Vice Chair Kawakami, and Members of the Committee:

I am Myoung Oh, Government Affairs Director, here to testify on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its 8,000 members. HAR **submits comments** on H.B. 23 which clarifies the activities custodians or caretakers may engage in under Chapter 467, Hawaii Revised Statutes.

Act 326, Session Laws of Hawaii 2012 was intended to require operators of transient accommodations to designate local contact information and to require website advertisements for transient accommodations to display tax registration identification numbers. The purpose of the law was to foster consumer protection for visitors by requiring a local agent, and to ease tax enforcement.

H.B. 23 serves to strengthen and clarify Act 326, by narrowing the definition of caretaker or custodian, and making it clear that any person who manages property or is designated as a local contact for more than one property is subject to HRS Chapter 467, the real estate and salespersons licensing law. The intent of H.B. 23 is therefore consistent with the purpose of this chapter.

HAR notes that these amendments also make it clear that, if a person engages in unlicensed activity, the Regulated Industries Complaint office (RICO), in conjunction with the Real Estate Commission (REC) has the power to enforce the licensing law.

Mahalo for the opportunity to testify.

kawakami2 - Rise

From: mailinglist@capitol.hawaii.gov
Sent: Monday, January 28, 2013 5:16 PM
To: CPCtestimony
Cc: kathy@maui.net
Subject: Submitted testimony for HB23 on Jan 30, 2013 14:00PM

HB23

Submitted on: 1/28/2013

Testimony for CPC on Jan 30, 2013 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Rentals Maui Inc.	Rentals Maui Inc.	Support	No

Comments: Jan 28, 2013 , This letter is written in SUPPORT of HB-23 and SB 4 Years ago, the State of Hawaii decided that individuals or companies that were involved in the rental of properties in Hawaii where in fact performing a real estate transaction. This decision required the individual or business to obtain a real estate license, and for the enterprise to be under the supervision of a real estate broker with oversight from the real estate commission. This move offered consumers, both property owners and the visitor public, significant protections from unscrupulous and poorly managed operations. Over the past decade, an increasing number of unlicensed individuals have appeared offering rental services to multiple owners in conflict of the clear intent of HRS 467-1 & 467-2 in this regard. The wording of HB-23 and SB-41 is meant to make the requirement for a real estate license requirement more clearly defined when providing real estate rental services by more clearly identifying these activities. Your support of this bill will remove ambiguity, and improve clarity of HRS 467 in this regard, and provide the public the consumer protection they expect and deserve. Sincerely yours, Rentals Maui Inc.

Please note that testimony submitted less than 24 hours prior to the hearing , improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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Condominium Rentals Hawaii



362 Huku Li'i Pl., # 204, Kihei, HI 96753 • Tel (808) 879-2778 • Toll Free (800) 367-5242 • Fax (808) 879-7825

January 29, 2013

Dear Chairman McKelvey:

I am writing in Support of HB23.

The changes proposed in HB23 will clear up any uncertainty as to when a person can act as a caretaker or custodian and when they must be licensed to perform real estate services for multiple property owners.

Currently there are many individuals who are acting as managers without proper licensing thereby consumers are not being afforded protections guaranteed when licensed individuals perform these same tasks.

I ask for your favorable consideration of this bill.

Mahalo,

R. Allan Raikes
President

RAR/lm