

**LU Committee**

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**From:** Lawrence Carnicelli <Lawrence@RAMaui.com>  
**Sent:** Friday, February 16, 2018 12:01 PM  
**To:** LU Committee  
**Cc:** Robert Carroll; Riki Hokama; Alike A. Atay; Elle Cochran; Stacy S. Crivello; Donald S. Guzman; Kelly King; Yukilei Sugimura; Mike White  
**Subject:** RAM LU-7 Testimony  
**Attachments:** LU7 5yearban 2.20.2018.docx

Aloha Land Use Committee,

Please find my written testimony in opposition to LU-7 to be heard on Tuesday February 20, 2018. I have also included several suggested amendments to the proposed bill.

Mahalo,

**Lawrence Carnicelli**

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February 20, 2018  
TESTIMONY LU-7

Good afternoon and aloha Chair and members. My name is Lawrence Carnicelli, speaking on behalf of the REALTORS Association of Maui's 1700 licensed professional REALTORS and affiliates on LU-7.

As you know the Land Use Committee LU-7 was sent back to this committee from the full Council due to numerous questions and unintended consequences this bill raised. The bill at Council had one small sentence about short-term rental homes restrictions and standards; "*The dwelling unit has been owned by the applicant for at least five years prior to the date of application.*" It's a simple and seemingly innocuous sentence and yet the form of the bill before you today has no changes, additions nor amendments from what was rejected by the Council.

As written this bill would fundamentally be a Prohibition on LEGAL Short Term Rental Housing discouraging homeowners from legally running an STRH and fueling the illegal "black market" to new heights. History has shown that prohibition (of anything) does not work. This bill will harm the real estate industry and attacks the rights of property owners... our clients. Therefore RAM is in **OPPOSITION**.

While I understand some are fundamentally opposed to *any and all* short term rentals, the fact of the matter is that genie is already out of the bottle whether we like it or not. They are part of the new shared-economy and it is the way people now travel. Vacation rental homes are here to stay... even if we outlaw them. Therefore, we can chose to allow them, regulate them and collect the benefits, or we can strangle them to the point of fueling the illegal black market.

Therefore, I think that it is very important to separate out the conversation about the illegal operators and the legal ones. This bill would, one again, put legal operators at a competitive disadvantage and incentivize illegal rentals.

Problems with this bill:

- 1) A Cap already exists – The ordinance already has a cap of 200 short term rental homes County wide.
- 2) A removal of property rights - The roughly 5,200 property owners that purchase a home within the last five years will have a basic right stripped and taken away from them.
- 3) Fuels "Black Market" rentals – The County's permitting process is wrought with numerous hurdles and obstacles. Lengthening the process will only increase the illegal rentals that proliferate our communities and take away needed housing for our local families.
- 4) Disclosure issues - This could potentially create disclosure issues for REALTORS® and the County. REALTORS® who represented buyers within the past 5 years may have to retroactively disclose their client's rights have been stripped.
- 5) No ownership transfers – As the bill reads now, any transfer of ownership (even into a family trust or children) would trigger the owner into the 5-year moratorium and a loss of their livelihood.
- 6) Loss of renewals – Currently the Planning Department treats homeowners that apply late for renewals as if it is a new application. Should an owner miss their deadline by one day, they would then have to wait five years to reapply under this type of enforcement.
- 7) No just cause - There has never been a study nor any statistics showing that new purchasers of homes are a cause of any harm to short term or long term housing. This bill will not solve any problems and do nothing to help the families of Maui. However, it will cause harm to the economy.
- 8) Safeguards already in place - The current law was vetted by many in the community and already has many protective provisions built into the law. Mainly there are already caps on maximum amount of LEGAL STRH's.
- 9) Attacks legitimate operators not illegal - This bill does nothing to address the growing number of illegal operators and is specifically geared to stop legally operating STRH's.

- 10) SEVEN-year Ban – The bill proposes that a new homeowner has to wait five years to even apply for a permit. The application process can take upwards of two years which, for all intents and purposes, makes this a 7-year prohibition.
- 11) Enforcement - The real issue with short term housing springing up all over our neighborhoods is the lack of enforcement of current law. While there needs to be a remedy for that. This does not do such.
- 12) Unformulated time frame - There is no justification nor connection for the five year banishment.
- 13) Loss of revenue to the County - By forcing more home owners to operate illegally the County is losing out on collected GET and TAT. Also, there is no gain in revenues from legal operators who must remove the exemption from their real property tax bill.
- 14) Overreaching issues – Less than ½ of 1% of new home sales become STRH.

While RAM opposes this bill in defense of property rights and support of legal proprietorship of short term housing we understand that this measure may still pass. If that is the case we urge these amendments.

#### Mandatory Amendments (if passed):

- 1) *"The dwelling unit has been owned by the applicant for at least ~~[five]~~ three years prior to the date of application;"*

If the intent of this bill is to curb speculators from purchasing homes merely for vacation rental use three years is a long enough time to stop that type of behavior. A 3-year waiting period moves the investment from a short-term risk to a long term risk especially as we get closer to the 'caps'. The application process can take upwards of two years which, for all intents and purposes, waiting 5 years to apply makes this a 7-year prohibition not 5 years.

- 2) *"The dwelling unit has been owned by the applicant for at least five years prior to the date of application starting with any new home purchase eighteen months after the date of enactment of the ordinance;"*

There are several unintended consequences to this bill. The most egregious is the stripping of rights from current homeowners. There needs to be additional language included to protect current homeowner's rights and the rights of new buyer's that are in escrow. It only makes sense this take effect on sales after enactment.

- 3) *"The dwelling unit has been owned by the applicant for at least five years prior to the date of ~~[application]~~ issuance of the permit;"*

As stated above the application process can take upwards of two years which, for all intents and purposes, waiting 5 years to apply makes this a 7-year prohibition not 5 years. We contend that even if this becomes law homeowners should still have right to apply prior to 5 years. However, the issuance of the permit should take place at the 5 year mark.

- 4) *"The dwelling unit ~~[has been owned]~~ was purchased by the applicant for at least five years prior to the date of application;"*

Many people transfer title to their properties for numerous reasons. The current language used would automatically disqualify harmless assignment of title transactions even though it was not a sale.

So if I take those three amendments we end up with a sentence that reads as follows:

***"The dwelling unit was purchased by the applicant at least three (3) years prior to the date of issuance of the permit starting with any new home purchase eighteen (18) months after the date of enactment of the ordinance."***

As you will also recall Chair Carroll's original draft of this bill had additional criteria exceptions:

- A. The dwelling unit proposed for short-term rental home use has an assessed building value as determined by the director of finance of \$1,000,000 or more; or
- B. A short-term rental home pursuant to this chapter was permitted for the property within three years of the date the applicant purchased the property.

The purpose was to address that most higher end homes are never going to be long-term rentals and that homes previously rented short-term have acclimated to their neighborhoods.

Therefore we also suggest the following additional amendments (if passed):

- 1) Exception for houses with a building value over \$3,200,000 ...OR... Exception for houses only within the Kapalua, Kaanapali, Wailea, Makena districts or reside directly oceanfront. Originally there was an exception for houses over one million dollars. I see both sides of this argument. Why give exemptions to 'the rich'? Or put the vacation rentals in houses that would not be long term rentals where our local families could live. With both in mind, my suggestion (if this was even addressed) would be to make an exception for houses with a value over \$3,200,000 (a number already in the ordinance) ... OR... Exception for houses only within the Kapalua, Kaanapali, Wailea, Makena districts or that reside directly oceanfront (where we want tourist to go).
- 2) Exception for previously permitted properties. Properties that already have had a short-term rental home permit where the new owner applies for a new permit within three (3) years of purchasing the property are exempt from the five-year ownership requirement. Currently the permits are non-transferable so the existing permits are no longer valid once a property is sold to a new owner. In this case, the new owner would have three (3) years to apply for a new STRH permit. The reasoning behind this was to allow properties already vetted as appropriate short-term rentals and not in the long-term residential housing market when sold to continue as a short-term rental.

Again, RAM stands in **opposition**. However, if the Committee chooses to move this forward; the community would be best served if this were to be amended as suggested above to address the unintended consequences that bill would create.