

**PRESENTATION OF THE
REAL ESTATE COMMISSION**

TO THE SENATE COMMITTEE ON
COMMERCE, CONSUMER PROTECTION, AND AFFORDABLE HOUSING

TWENTY-FOURTH LEGISLATURE
Regular Session of 2008

Tuesday, March 11, 2008
9:00 a.m.

TESTIMONY ON HOUSE BILL NO. 2460, RELATING TO CONDOMINIUMS.

TO THE HONORABLE RUSSELL S. KOKUBUN, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Bill Chee and I serve as the Chair of the Real Estate Commission's ("Commission") Condominium Review Committee, and I thank you for the opportunity to present testimony on House Bill No. 2460, Relating to Condominiums. The companion bill is Senate Bill No. 2312 which passed out of this committee unamended and is identical to House Bill No. 2460. The Commission believes the bill does not take into consideration all issues to make this a viable proposal and therefore cannot support the measure at this time.

House Bill No. 2460 proposes to allow condominium associations to invest association funds in certificates of deposit through the Certificate of Deposit Account Registry Service ("CDARS") network restricted by a prescribed amount.

In previous testimony before this Committee on the companion bill, the Commission testified that the proposed language contained in Senate Bill No. 2312 would help to clarify the issue as to whether investment in the CDARS network is an authorized investment. Since providing such testimony, the Commission staff has received additional information wherein other sections in the condominium law may preclude an investment in the CDARS network to be an authorized investment. Specifically:

- Does investing in CDARS meet the requirements of §514A-97(c)(1), HRS, and §514B-149(c)(1)(A), HRS, requiring all association funds to be "Deposited in a financial

institution, including a federal or community credit union, located in the State and whose deposits are insured by an agency of the United States government?" (emphasis added); and

- Is investing in CDARS a "deposit" of funds in a local financial institution satisfying the requirements of §514A-97(c)(1), HRS, and §514B-149(c)(1)(A), HRS?

Thus, while the proposed amendments to House Bill No. 2460 are aimed at eliminating the uncertainty of CDARS as an authorized investment, questions remain as to whether CDARS funds are deposited in a local financial institution and whether such investment is in fact a "deposit" as required.

Thank you for the opportunity to present testimony.



**Hawaii
Association of
REALTORS®**
www.hawaii Realtors.com

The REALTOR® Building
1136 12th Avenue, Suite 220
Honolulu, Hawaii 96816

Phone: (808) 733-7060
Fax: (808) 737-4977
Neighbor Islands: (888) 737-9070
Email: har@hawaii Realtors.com

March 8, 2008

The Honorable Russell S. Kokubun, Chair
Senate Committee on Commerce, Consumer Protection, and
Affordable Housing
State Capitol, Room 229
Honolulu, Hawaii 96813

RE: H.B. 2460 Relating to Condominiums
Hearing Date: Tuesday, March 11, 2008 @ 9:00 a.m., Room 229

On behalf of our 10,000 members in Hawaii, the Hawaii Association of REALTORS® (HAR) expresses concern regarding the intent of H.B. 2460, which proposes to allow condominium associations to invest funds in certificates of deposit through the Certificate of Deposit Account Registry Service (CDARS) network.

We question whether this legislation is necessary as the sections in the Hawaii Revised Statutes being amended by H.B. 2460 already allow condominium associations to invest funds in certificates of deposit through the CDARS.

Mahalo for the opportunity to testify.



HAWAII BANKERS ASSOCIATION

1000 BISHOP ST., SUITE 301B • HONOLULU, HAWAII 96813-4203
PHONE: (808) 524-5161 • FAX: (808) 521-4120

Presentation to the
Senate Committee on Commerce, Consumer Protection, and Affordable Housing
Tuesday, March 11, 2008 at 9:00 a.m., Conference Room 229

Re: HB 2460 Relating to Condominiums

Senator Russell S. Kokubun, Chair
and members of the Committee:

My name is Michael Lai. I am an employee of Hawaii National Bank and I testify for the Hawaii Bankers Association (HBA) in support of HB 2460. HBA is a trade organization whose membership includes all commercial banks and thrift institutions doing business in Hawaii.

The purpose of this bill is to clarify that condominium associations may invest in certificates of deposit through the Certificate of Deposit Account Registry Service (CDARS) network. While we believe that condominium associations already have this ability, others may interpret the statute differently.

CDARS is a program that enables even the smallest financial institution in Hawaii to provide its customers with access to multi-million dollar Federal Deposit Insurance Corporation (FDIC) insurance coverage for their certificates of deposit. As summarized in the attachment, CDARS has already been deemed an acceptable investment for public funds in Hawaii.

HB 2460 eliminates any uncertainty as to whether CDARS is an authorized investment for condominium associations and gives them the same investment option that the State and Counties currently have.

We respectfully request the Committee to pass HB 2460.

Thank you for the opportunity to testify. I will be happy to answer any questions that you may have.

Michael Lai



CDARS: The Smart, Easy Way to Manage Public Funds

With CDARS, you get:

One Bank

Get multi-million dollar FDIC insurance by working directly with just one bank – any local bank that offers CDARS – and avoid the burden of tracking changing collateral values.

One Rate

Negotiate one rate for each CD maturity and enjoy the option of reinvesting them through a simple process.

One Statement

Receive one easy-to-read statement summarizing all your CD holdings.

Now, through the CDARS® service, you can access multi-million dollar FDIC coverage on CD investments made through a single bank. This means that you can enjoy peace of mind knowing your funds are secure while avoiding the hassles associated with tracking collateral, requiring surety bonds, or working with multiple banks – and you can strengthen the community in the process.

How does CDARS work?

Banks that offer CDARS are members of a special network. When a public fund depositor places a large deposit with a network member, that bank uses the CDARS service to place your funds into CDs issued by other members of the network. This occurs in increments of less than \$100,000 to ensure that both principal and interest are eligible for full FDIC protection. Other network members do the same thing with their customers' funds. With help from a sophisticated matching system, banks exchange funds with other members of the Network. These exchanges, which occur on a dollar-for-dollar basis, bring the full amount of your original deposit back to each originating bank. As a result, member banks can make the full amount of your deposit available for community lending purposes (your money stays local!) and your public unit can access FDIC coverage from many banks while working with just one.

What else should I know?

The CDARS benefits of *One Bank, One Rate, and One Statement*SM help to reduce your administrative burden, especially during tax and financial reporting seasons. Also, your organization's confidential information remains protected.

The CDARS program is something every county, city, and town should investigate. With CDARS, our deposits are eligible for multi-million dollar FDIC insurance, so we don't have to track those constantly changing collateral values, and they earn a decent rate. This is a good deal for the county and its constituents; our investment dollars work harder while being backed by the 'full faith and credit' of the Federal government and our time is freed up to work on other important matters.

– Bonita Stadler, Treasurer – Payne County, OK

Want to learn more?

Please contact one of your representatives:

Business Development Advisors

Warren Blom, (866) 776-6426 ext. 3453, wblom@promnetwork.com

Max Damm, (866) 776-6426 ext. 3361, mdamm@promnetwork.com

Regional Director

Reg Truman, (866) 776-6426 ext. 3448, rtruman@promnetwork.com



If a depositor is subject to restrictions with respect to the placement of funds in depository institutions, it is the responsibility of the depositor to determine whether the placement of the depositor's funds through CDARS or a particular CDARS transaction satisfies those restrictions. Public fund deposits must be placed through a CDARS Reciprocal transaction to ensure that the total dollar amount is maintained by the financial institution that offers CDARS. Funds may be submitted for placement only after a depositor has signed a CDARS Deposit Placement Agreement with a member bank. CDARS is a registered service mark of Promontory Interfinancial Network, LLC. 10/06

Using CDARS for Public Funds

In the State of Hawaii

The investment of public funds through CDARS by the State of Hawaii and its counties is authorized by provisions of the Hawaii public funds statutes, as recently confirmed by the State's Attorney General.

State Funds

Section 36-21 of Hawaii Revised Statutes (HRS) provides in relevant part:

"(a) The director of finance may invest any moneys of the State which in the director's judgment are in excess of the amounts necessary for meeting the immediate requirements of the State in ... (11) Time certificates of deposit;"

Section 38-2 of HRS requires that state funds placed with a financial institution be protected by collateralization, but Section 38-3 further provides that:

"[s]ecurity shall not be required for that portion of any deposit that is insured under any law of the United States."

The Attorney General of the State confirmed in a letter dated January 20, 2004, to the Director of Finance, that:

"[a]ssuming that the CDARS program complies with its recordkeeping and other program requirements such as keeping the certificate of deposit amounts below \$100,000 (principal and interest), we believe that the CDARS program complies with the statutory requirements regarding the investment of state treasury moneys and the protection of such deposits."

County Funds

Section 46-50 of HRS provides in relevant part that: the director of finance of each county may invest excess moneys in "(10) Time certificates of deposit;"

Section 46-48 of HRS provides that:

"Chapter 38, relating to the deposit of state money in banks, is extended to the several counties" so that each county shall have the same rights and obligations as the State. This provision in effect extends the Attorney General's Opinion with respect to investment of State funds through CDARS, to the investment of county funds through CDARS.

Security for Protection of Funds Deposited

Section 38-3 of HRS specifies the securities that may be deposited for the protection of funds deposited in excess of amounts covered by federal deposit insurance. In 2004 the Legislature amended this section to add to the list of approved security for deposits;

"(9) Certificates of deposit issued through the Certificate of Deposit Account Registry Service in an amount at least equal in their market value, but not to exceed their par value, to the amount of the deposit with the depository;"

CDARS satisfies the FDIC's requirements for agency pass-through deposit insurance coverage.

If a depositor is subject to restrictions with respect to the placement of funds in depository institutions, it is the responsibility of the depositor to determine whether the placement of the depositor's funds through CDARS or a particular CDARS transaction satisfies those restrictions. Public fund deposits must be placed through a CDARS Reciprocal transaction to ensure that the total dollar amount is maintained by the financial institution that offers CDARS.

CDARS is a registered service mark of Promontory Interfinancial Network, LLC.

10/06