



GOV. MSG. NO. 368

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

March 19, 2010

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fifth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

I am transmitting herewith SB771 SD1 HD1, without my approval, and with the statement of objections relating to the measure.

SB771 SD1 HD1

A BILL FOR AN ACT
RELATING TO APPRAISALS.

Sincerely,


LINDA LINGLE

EXECUTIVE CHAMBERS

HONOLULU

March 19, 2010

STATEMENT OF OBJECTIONS TO SENATE BILL NO. 771

Honorable Members
Twenty-Fifth Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, Senate Bill No. 771, entitled "A Bill for an Act Relating to Appraisals."

The purpose of this bill is to require real estate appraisers to comply with the Uniform Standards of Professional Appraisal Practice when they are acting as arbitrators. The bill also requires that the record of an award in an arbitration proceeding conducted by an appraiser include specific findings of fact, evidence, and the appraiser's reasoning for the award.

This bill is objectionable because appraisers who serve as arbitrators are not engaging in the practice of real estate appraisal. The fact that arbitration is being conducted for the purpose of determining the value of real estate does not cure this objection. Arbitration is an alternative dispute resolution process used to reach a compromise solution, and not an appraisal. In an arbitration proceeding, the parties submit their cases to an impartial person or panel for what is intended to be a final, binding decision.

During an arbitration proceeding to determine the value of real estate, both sides typically hire their own appraisers as expert witnesses. These expert witnesses are required by state statute to follow the Uniform Standards of Professional Appraisal Practice ("USPAP") if they perform an appraisal. Arbitrators therefore have an opportunity to evaluate competing and USPAP conforming appraisals and make an accordingly informed decision.

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Forcing arbitrators to use USPAP would require them to follow a standard that is not applicable to their proceedings, increasing costs and lengthening the process of arbitration. It would be more appropriate to require these panels to follow the Uniform Arbitration Act, as set forth in Chapter 658A of the Hawaii Revised Statutes, and amend the chapter to specify the award explanation.

While requiring arbitrators to comply with USPAP is not an appropriate mechanism for improving transparency, there is some merit in the second element of this legislation, which would require that the record of an award in an arbitration proceeding conducted by an appraiser include specific findings of fact, evidence, and the appraiser's reasoning for the award. Parties to arbitrations that determine the value of real estate might indeed benefit from a more detailed rationale for an arbitration award. Accordingly, legislation along these lines may be worth pursuing in the future, with the input of all stakeholders. However, while improving the transparency of these types of arbitration proceedings deserves attention, this bill, as written, is not the appropriate mechanism for achieving that goal.

For the foregoing reasons, I am returning Senate Bill No. 771 without my approval.

Respectfully,



LINDA LINGIE
Governor of Hawaii

VETO

THE SENATE
TWENTY-FIFTH LEGISLATURE, 2009
STATE OF HAWAII

S.B. NO. 771
S.D. 1
H.D. 1

A BILL FOR AN ACT

RELATING TO APPRAISALS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The purpose of this Act is to require a real
2 estate appraiser to rely on the Uniform Standards of
3 Professional Appraisal Practice when acting as an appraiser or
4 an arbitrator in an arbitration proceeding.

5 SECTION 2. Section 466K-4, Hawaii Revised Statutes, is
6 amended by amending subsection (a) to read as follows:

7 "(a) No person may practice as a real estate appraiser in
8 this State unless that person has been licensed or certified to
9 practice in accordance with this chapter and rules adopted by
10 the director of commerce and consumer affairs pursuant to
11 chapter 91. All real estate appraisers who are licensed or
12 certified to practice in this State shall comply with the
13 current uniform standards of professional appraisal practice
14 approved by the director when performing appraisals in
15 connection with a federally or non-federally related real estate
16 transaction. A real estate appraiser shall comply with the
17 uniform standards of professional appraisal practice when acting
18 as an appraiser or as an arbitrator in an arbitration proceeding

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1 to determine the fair market value or fair market rental of real
2 estate."

3 SECTION 3. Section 658A-19, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "~~[-]~~ §658A-19 ~~[+]~~ Award. (a) An arbitrator shall make a
6 record of an award. The record shall be signed or otherwise
7 authenticated by any arbitrator who concurs with the award. The
8 arbitrator or the arbitration organization shall give notice of
9 the award, including a copy of the award, to each party to the
10 arbitration proceeding.

11 (b) In an arbitration proceeding to determine the fair
12 market value or fair market rental of real property where the
13 arbitrator is a real estate appraiser licensed under chapter
14 466K, the record of an award shall include but not be limited to
15 findings of fact, the appraiser's rationale for the award, and
16 information regarding the evidence which provided the basis for
17 the award.

18 ~~[-(b)-]~~ (c) An award shall be made within the time
19 specified by the agreement to arbitrate or, if not specified
20 therein, within the time ordered by the court. The court may
21 extend or the parties to the arbitration proceeding may agree in
22 a record to extend the time. The court or the parties may do so



1 within or after the time specified or ordered. A party waives
2 any objection that an award was not timely made unless the party
3 gives notice of the objection to the arbitrator before receiving
4 notice of the award."

5 SECTION 4. Section 658A-23, Hawaii Revised Statutes, is
6 amended by amending subsection (c) to read as follows:

7 "(c) If the court vacates an award on a ground other than
8 that set forth in subsection (a) (5), it may order a rehearing.
9 If the award is vacated on a ground stated in subsection (a) (1)
10 or (2), the rehearing shall be before a new arbitrator. If the
11 award is vacated on a ground stated in subsection (a) (3), (4),
12 or (6), the rehearing may be before the arbitrator who made the
13 award or the arbitrator's successor. The arbitrator shall
14 render the decision in the rehearing within the same time as
15 that provided in section [~~658A-19(b)~~] 658A-19(c) for an award."

16 SECTION 5. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.

18 SECTION 6. This Act shall take effect upon its approval.

