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LAWRENCE M. REIFURTH  
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DEPUTY DIRECTOR

**PRESENTATION OF THE  
PROFESSIONAL AND VOCATIONAL LICENSING DIVISION**

TO THE HOUSE COMMITTEE ON  
CONSUMER PROTECTION & COMMERCE

TWENTY-FIFTH LEGISLATURE  
Regular Session of 2010

Wednesday, February 3, 2010  
2:00 p.m.

**TESTIMONY ON SENATE BILL NO. 771, S.D. 1, RELATING TO APPRAISALS.**

TO THE HONORABLE ROBERT HERKES, CHAIR,  
AND MEMBERS OF THE COMMITTEE:

My name is Alan Taniguchi, Executive Officer for the Real Estate Appraiser Program, Professional and Vocational Licensing Division ("PVLD") of the Department of Commerce and Consumer Affairs ("Department"). Thank you for the opportunity to present testimony on Senate Bill No. 771, S.D. 1, Relating to Appraisals. The Department opposes this bill.

This bill seeks to require a real estate appraiser to comply with the Uniform Standards of Appraisal Practice ("USPAP") when acting as an appraiser in an arbitration to determine the fair market value of real estate.

When a real estate appraiser is appointed as an arbitrator, the appraiser is acting as the arbitrator. Usually, both sides hire their own appraisers as expert witnesses. These expert witnesses are required by State statute to follow USPAP if they perform an appraisal. The arbitrator listens to all the testimony and reviews the evidence presented. The arbitrator does not perform an appraisal. For these reasons, we feel that this bill is unnecessary.

Thank you for the opportunity to testify and we ask that this bill be held.



Hawaii Chapter

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February 03, 2010

Representative Robert N. Herkes, Chairman  
Representative Glenn Wakai, Vice Chairman  
Consumer Protection and Commerce Committee  
Hawaii State Capitol  
415 South Beretania Street, Suite No. 320  
Honolulu, Hawaii 96813

Regarding: Testimony against SB771SD1  
By the Hawaii Chapter of the Appraisal Institute

Gentlemen:

The Hawaii Chapter of the Appraisal Institute is part of an international organization of professional real estate appraisers with nearly 24,000 members and 91 chapters throughout the world. Its mission is to advance professionalism and ethics, global standards, methodologies, and practices through the professional development of property economics worldwide.

We speak against SB771SD1, Related to Appraisals, which would require a real estate appraiser to comply with the Uniform Standards of Professional Appraisal Practice (USPAP) when acting as an appraiser or arbitrator in an arbitration to determine the value or rental of real estate.

“Arbitration” is not the same as “appraisal.” “Appraisal” is the process of estimating value. For real estate appraisals, USPAP provides generally accepted appraisal standards for 1) the process of analyzing information and arriving at a value conclusion and 2) reporting the appraisal process and value conclusion.

“Arbitration” is the last resort in dispute resolution. In arbitration the parties submit their cases to an impartial, disinterested person or panel for a final and binding decision.

An arbitrator does not serve the same function as an appraiser. Appraisers may act as arbitrators. However, when they are acting as arbitrators, they are undertaking an arbitration process and not an appraisal practice.

In *Wong v. Chalmers*, the federal district court concluded that the real estate appraisers, when acting as arbitrators, are not engaging in an appraisal function. As a result, the court rejected a claim that an arbitration award should be vacated because the arbitrators failed to comply with USPAP. The court stated:

*As an initial matter, the court rejects KUA's argument that Defendants disregarded the law by not following professional standards for appraisers. The court finds that these guidelines do not govern the arbitration proceeding because here Hallstrom, Hulten and Vernon were acting as arbitrators, not as appraisers. The fact that the arbitrators were required to be licensed appraisers is immaterial here.*

We urge the Committee to deny the passage of SB771SD1. Thank you for this opportunity to submit this testimony.

*Hawaii Chapter of the Appraisal Institute*

A handwritten signature in black ink, appearing to be 'Ted Yamamura', with a stylized flourish extending to the right.

Ted Yamamura  
President

# CITIZENS FOR FAIR VALUATION

841 Bishop Street, Suite 1500  
Honolulu, HI 96813

ROBERT M. CREPS, PRESIDENT  
CAROL LAM, VICE PRESIDENT  
CONNIE SMALES, SECRETARY  
PHILLIP J. SILICH, TREASURER

CULLY JUDD, DIRECTOR  
KEALI'I LOPEZ, DIRECTOR  
OSWALD STENDER, DIRECTOR  
MICHAEL STEINER, EXEC. DIRECTOR

February 1, 2010

Honorable Representative Robert N. Herkes, Chair  
Honorable Representative Glenn Wakai, Vice Chair  
Members of Consumer Protection and Commerce Committee  
Consumer Protection and Commerce Committee

Re: Senate Bill 771, SD 1 Relating to Appraisal - Testimony in Support  
Hearing Date: February 3, 2010, 2:00 pm, Conference Room #325

Dear Representatives Herkes, Wakai and Members of the Committee:

My name is Michael Steiner and I am the Executive Director of Citizens for Fair Valuation, a non-profit coalition of lessees. I support passage of Senate Bill SB771 SD1 which would obligate real estate appraisers to comply with the Uniform Standards of Professional Appraisal Practices (USPAP) when acting as an appraiser or an arbitrator in an arbitration proceeding to determine the fair market value, fair market rental or fair and reasonable rents of real estate.

All real estate appraisers are required by current law to comply with USPAP when performing appraisals (rendering an expert opinion) in connection with real estate transactions. Therefore, it is appropriate the law be extended to provide the same ethical considerations and reporting requirements be followed when the same appraiser is sitting on a panel that will ultimately determine value or rental rates of real estate.

There should a single standard that real estate appraisers follow whether they are performing appraisals in or outside of arbitration proceedings. Applying USPAP in all such circumstances would provide the "customer," be it a bank, buyer, seller, lessor or lessee, additional transparency and trust in the process and results. SB771 would create more openness and accountability to the participants in the transaction or valuation.

SB771, SD1 will provide uniformity of valuations for real estate transactions whether within or outside of an arbitration proceeding.

I respectfully request you approve Senate Bill SB771, SD1.

Aloha,

*Michael Steiner*

Michael Steiner  
Executive Director  
Citizens for Fair Valuation  
Telephone: (808) 221-5955  
Email: [MSteiner@SteinerAssoc.com](mailto:MSteiner@SteinerAssoc.com)  
Web Site: [www.FairValuation.org](http://www.FairValuation.org)

**2809 Kaihikapu Street****Honolulu, Hawaii 96819-2011****Phone: 808-834-7757****Fax: 808-836-1096**

January 29, 2010

Representative Robert N. Herkes, Chair  
Representative Glenn Wakai, Vice Chair  
Members of the Consumer Protection and Commerce Committee  
State Capitol  
Honolulu, Hawaii 96813

Re: Senate Bill 771, SD 1 Relating to Appraisal - Testimony in Support  
Hearing Date: February 19, 2009, 9:30am, Room#312

Dear Representative Herkes, Wakai and Members of the Committee:

My name is Jason Ideta. I vote in the Kaneohe District and I am a lessee in the Mapunapuna area. My company is a small locally owned wholesale business that distributes auto parts. We have 40 full-time and 2 part-time employees who have worked very hard to build the business over the last 23 years.

I am submitting my testimony in support of this bill which requires real estate appraisers to comply with the Uniform Standards of Professional Appraisal Practices (USPAP) when acting as an appraiser or an arbitrator in an arbitration proceeding to determine the fair market value, fair market rental or fair and reasonable rents of real estate.

Although current law requires all real estate appraisers to comply with USPAP when performing appraisals in connection with federally or non-federally related real estate transactions, it is appropriate the law be extended to provide the same ethical considerations and reporting be provided when an appraiser is sitting on an a panel that will ultimately determine value or rental rates of real estate.

I respectfully ask for your support on the passage of SB771, SD1 which will provide transparency and uniformity of valuations for real estate transactions whether within or outside of an arbitration proceeding.

Thank you for your time.

Sincerely,

Jason Ideta  
Pacific Jobbers Warehouse, Inc.

# JN Group, Inc.

fka WHOLESALE MOTORS, INC.

ESTABLISHED IN 1961

2999 N. Nimitz Highway Honolulu, Hawaii 96819-1903

Phone: 808.831.2500 Fax: 808.831.2594 www.jnautomotive.com

JN Automotive Group

February 1, 2010

JN Chevrolet

Testimony

JN Mazda

In SUPPORT of SB771  
RELATING TO APPRAISALS

Audi of Hawaii

Presented by the House Committee on Consumer Protection and  
Commerce

for the public hearing 2 p.m. Wednesday February 3, 2010  
in Conference Room 325

Ferrari of Hawaii

Maserati of Hawaii

Honorable Representative Robert N. Herkes, Chair  
Honorable Representative Glenn Wakai, Vice Chair  
Members of Consumer Protection and Commerce Committee  
Consumer Protection and Commerce Committee

Lamborghini Hawaii

Bentley Honolulu

Dear Honorable Chair Herkes, Vice-Chair Wakai and Members of the  
Consumer Protection and Commerce Committee:

JN Lotus

I support the passage of Senate Bill SB771 which is a bill requiring real estate appraisers to comply with the Uniform Standards of Professional Appraisal Practices (USPAP) when acting as an appraiser or an arbitrator in an arbitration proceeding to determine the fair market value or fair market rental of real estate. As a lessee involved in past arbitration proceedings, it was not uncommon for real estate appraisers involved in the arbitration proceedings to respond that they did not have to comply with USPAP since the law didn't require it. The appraisers action resulted in a rental amount which I felt were unsupported had they complied with USPAP. We need Bill SB771 passed to provide for uniformity of valuations of real estate whether it's a federally or non-federally related real estate transaction or an arbitration proceeding.

La Collezione Nicolai

JN Car and Truck Rentals

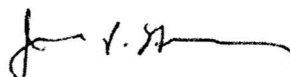
JN Leasing

JN Advertising

I urge you to approve Senate Bill SB771.

JN Development

Aloha,



Joseph P. Nicolai  
President

JPN/ct

State of Hawaii  
House of Representatives  
Committee on Commerce and Consumer Affairs

Honorable Robert Herkes, Chairman

Aloha Rep. Herkes,

I ask for your support of SB 771; Relating to Appraisals, in which appraisers acting as arbitrators are required to comply with the Uniform Standards of Professional Appraisal Practice (USPAP). I ask this as a small businessman who engages in providing warehouse services to other small business's on Oahu and Hawaii Island. I currently have 3 State Lease's and 1 KSBE Lease of Industrial property that are controlled by Lease documents requiring Arbitration by Real Estate Appraisers if the parties are unable to agree on a new lease rent. I must note that I have never had a problem or had to go to Arbitration with my State of Hawaii lease renewals.

Most, if not all, commercial real estate leases have a provision that when establishing the rent for a new (sucessive) period in the Lease that if the parties are not able to agree that they will go to Binding Arbitration. This arbitration panel **MUST** consist of 3 licensed real estate appraisers. Each party is represented by a licensed real estate appraiser who function before the panel as an Expert Witness on the Lessor or Lessee's behalf. Hence there are five (5) appraisers working together to arrive at a fair market value (FMV) to determine the new Lease Rent. They are all experienced and guided by following USPAP procedures as mandated by law in their respective appraisal practices. They are all experienced establishing a FMV and providing a basis and evidence to support this valuation.

As you are aware this requirement to follow USPAP is a result of the S & L disaster of the '80's which cost the Federal Government (the Taxpayers) billions of dollars. Mistakes in any profession (e.g. medical malpractice, legal malpractice) happen despite stringent licensing and professional ethics. The customary relief is the legal system, torts. This can not be done under commercial real estate leases, the Arbitration Panel acts in place of the Courts system. Arbitration awards are rarely challanged due to the difficulty in determing error or ommission.

When the local Appraisal Institute (AI) opposed SB 771 during the 2009 session they based their position on the following;

*An arbitrator does not serve the same function as an appraiser. Appraisers may act as arbitrators.*

*However, when they are acting as arbitrators, they are undertaking an arbitration process and not an appraisal practice*

This position was also taken in opposition by Mr Alan Taniguchi, Executive Officer of the DCCA Division that supervises appraisers. This seems quite unusual to me, that a DCCA agent would testify against legislation that leads to transparency and engenders respect for the profession he is supervising. Remember, the Arbitration Panel **MUST** be composed of Appraisers.



The above testimony by the AI is a false argument to make. SB 771 is reaching out to the nearest and most appropriate set of guidelines (USPAP) to correct a deficiency in the implementation of a common provision in commercial real estate leases. It is very simple. When a Lessor or Lessee currently enters Arbitration the result comes from a "black box". No explanation, support, evidence, basis, or rationale for the Award is provided. This lacks transparency and leads to a fear of arbitration by the weaker party, usually the Lessee. The expense incurred and the risk involved, when the Lessee only faces this situation every 10 years, becomes a nightmare. The Lessor on the other hand, since 7 large landowners own and lease more than 85% of all commercial land, is very experienced at this and has fewer concerns with the consequence of the process. This leads to a coercive environment in the negotiation process between Lessor and Lessee. In a recent conversation I had with the Land Agent for a large trust I was told, referring to our respective Appraisers, and I quote, "they'll just split the difference anyway... so let's just do it". I don't agree with this.

SB 771 will lead to a more constructive and reasonable basis for resolving disputes when settling lease rent according to the terms of the Lease. Its defeat will only help the vested interests of Appraisers and Landowners, who have taken advantage of the current situation to their respective benefit. This has brought a high degree of scepticism in the local business community about the professionalism of the local real estate appraisers when they act as Arbitrators. This bill is a necessary corrective to this unfortunate situation. Help the local business community by extending USPAP guidelines to the Arbitration process in commercial real estate leases.

Mahalo for your consideration of my testimony,

James McCully  
Owner  
McCully Works , Warehouse Services for Small Business  
40 Kamehameha Ave. , Hilo  
808-933-7000

**JAMES W. Y. WONG**

3737 Manoa Road • Honolulu, Hawaii 96822 • (808)946-2966 • Fax: (808)943-3140

February 1, 2010

Honorable Representative Robert N. Herkes, Chair                      **Via Email**  
Honorable Representative Glenn Wakai, Vice Chair                      **CPCtestimony@Capitol.hawaii.gov**  
Members of Consumer Protection and Commerce Committee  
Consumer Protection and Commerce Committee

RE: Senate Bill SB771

Dear Honorable Chair Herkes, Vice-Chair Wakai and Members of the Consumer Protection and Commerce Committee:

I support the passage of Senate Bill SB771 which is a bill requiring real estate appraisers to comply with the Uniform Standards of Professional Appraisal Practices (USPAP) when acting as an appraiser or an arbitrator in an arbitration proceeding to determine the fair market value or fair market rental of real estate.

As a lessee of numerous leasehold commercial properties, I have been involved in 4 arbitration proceedings where real estate appraisers involved in the arbitration proceedings failed to comply with USPAP since the law didn't require it. Their action resulted in a rental amount which I felt were unsupported had they complied with USPAP. We need Bill SB771 passed to provide for uniformity of valuations of real estate when a real estate appraiser performs an appraisal whether it's a federally or non-federally related real estate transaction or for an arbitration proceeding.

Please approve Senate Bill SB2020

Aloha,

  
James W. Y. Wong

Testimony for CPC 2/3/2010 2:00:00 PM SB771  
Conference room: 325  
Testifier position: support  
Testifier will be present: No  
Submitted by: Knud Lindgard  
Organization: Individual  
E-mail: [Lindgard@aol.com](mailto:Lindgard@aol.com)  
Submitted on: 2/1/2010

Comments:

Dear Chairman Herkes and Committee Members

Whereas when a person follows laws, rules and procedures, it follows that the person would be granted compliance therewith.

I am now a victim of trying to apply Act 180, 1998 signed into law and halfhearted implemented in HRS 466 -- I followed the rules of the contract -- I tried to get the opposite side, the land owner in Kailua to apply equally -- to no avail -- I assigned appraisers to the job, and all refused to perform an appraisal under USPAP. Finally I found one willing and I made sure the appraisal was in accordance with USPAP. The appraiser was subsequently disqualified because he had performed an appraisal accordance to USPAP and therefore he would no longer be &quot;impartial&quot;; - then followed the appointment by the court of an appraiser with a flawed performance. Then eviction and loss of property equity, please note that my mortgage was paid in full!!!

Subsequently the land owner disregarded the HAZMAT designation and repaired the property and house without proper permits and sold it for \$749,000 on a Limited Warranty Deed, AS/IS...

The State Government, the Legislature and the Judiciary have installed a dictatorship in &quot;Appraiser/Arbitrators&quot;; that is in direct violation of the publics civil rights to a trial. I obtained a jury trial scheduled for March 2010 which has now been dismissed by Judge Nishimura ---

I have a personal loss of family relations because of witness tampering and perjury by an ex family member, I am 81 years old and now alone, the attempt to act in accordance with law has consumed 10 years of my life and \$50,000 in costs -- Do you not think that in the thousands of foreclosures there are not crooked appraisers just like in 1988???

If you do then I have accumulated a list of over 1500 appraisers that were publicly listed since November 2008. There were NO appraisers listed for Hawaii -- as a matter of fact I have only been able to tentatively pinpoint four (4) in the past 20 years!!! The national registry this morning lists 889 appraisers in Hawaii up from 814 two years ago.

Please pass SB771 with the intent of applying USPAP to all appraisals, in addition to the Home Valuation Ethics Code now installed in the federal institutions.

We, the wronged constituents deserve not less.

Respectfully,

Knud Lindgard

Re. SB 771 SD1. Hearing: February 3, 2010 at 2:00pm, House Conference Room 325

Dear Chairperson Rep. Robert Herkes, Vice-Chair Glenn Wakai, and Members of the Consumer Protection & Commerce Committee,

Please Pass SB 771 SD1

This bill will bring accountability and transparency to an arbitrator's decision for real estate valuation/rental matters. Without passing this bill, that accountability and transparency does not exist. Our Hawaii economy is too dependant on the real estate industry, especially now, to allow this lack of accountability and transparency to continue.

Whereas many disputes lend themselves well to arbitration and the typical one-line response in the arbitration award, the matter of real estate valuations or rentals does not.

This bill will go a long way to help assure that when parties are faced with the need to determine real estate values and/or real estate rental rates, both Buyers/Sellers and Lessors/Lessees will have a fair chance of obtaining a fair valuation or rental rate.

SB 771 SD1 references the methodology for establishing real estate values and rental rates, whether or not that determination is become conducted via an arbitration

Currently arbitrators feel that they are exempt from following any standards, when they are required to arrive at a "Fair Market Value" or a "Fair Market Rental" for real estate. This bill will require appraisers to follow the national Appraisal Foundation's Uniform Standards of Professional Appraisal Practices (USPAP), whether or not an arbitration is involved.

The matter of determining real estate values and real estate rental rates, is far too important to be left to an individual's (or individuals') undocumented arbitrary opinion and decision.

The USPAP standards were established via Congress after the Savings & Loan industry fiasco of the 1980's, in an effort to require appraisers to value real estate on a fair and equitable basis, and to have the valuation supported by appropriate documentation


When considering that an arbitrator's award is so difficult (nearly impossible) to change, the need for this bill becomes even more apparent

Again, whereas many disputes lend themselves well to the typical one-line response in an arbitration award, the matter of real estate valuations or rental rates does not

Now, more than ever, accountability and transparency in real estate valuation and rental determination, is needed.

Please pass SB 771 SD1

Thank you  
Rick Krystoff



VIA EMAIL

CPCtestimony@Capitol.hawaii.gov

Honorable Representative Robert N. Herkes, Chair  
Honorable Representative Glenn Wakai, Vice Chair  
Members of Consumer Protection and Commerce Committee  
Consumer Protection and Commerce Committee

RE: Senate Bill SB771

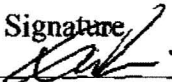



Dear Honorable Chair Herkes, Vice-Chair Wakai and Members of the Consumer Protection and Commerce Committee:

PETITION

We support passage of Senate Bill SB771 which is a bill requiring real estate appraisers to comply with the Uniform Standards of Professional Appraisal Practices (USPAP) when acting as an appraiser or an arbitrator in an arbitration proceeding to determine the fair market value or fair market rental of real estate. Current law requires all real estate appraisers to comply with USPAP when performing appraisals in connection with federally or non-federally related real estate transactions. There should be only one standard real estate appraisers should follow when they are performing appraisals work and that is to comply with USPAP when performing an appraisal whether it's a federally or non-federally related real estate transaction or for an arbitration proceeding.

As an employee of a lessee of commercial real estate who has participated in arbitration proceeding where the appraisers failed to provide an accountability of their arbitration award, passage of the bill will provide uniformity of real estate valuation and hopefully a rent or value based on the true market value.

We urge your approval of this bill.

Print Name	Signature	Address
KENDALL DO		91-213 KIKIAO ST., KAPOHOLA HI. 96707
ALEX DO		2304 Kapiolani Blvd., Honolulu, HI 96826
Ross Kara		45-507 Makuhia St. Kuloa, 96744
Felicien Peret		2022 W. Koloa Dr. Hanalei, HI 96819

**VIA EMAIL**

[CPCtestimony@Capitol.hawaii.gov](mailto:CPCtestimony@Capitol.hawaii.gov)

Honorable Representative Robert N. Herkes, Chair  
Honorable Representative Glenn Wakai, Vice Chair  
Members of Consumer Protection and Commerce Committee  
Consumer Protection and Commerce Committee

RE: Senate Bill SB771

Dear Honorable Chair Herkes, Vice-Chair Wakai and Members of the Consumer Protection and Commerce Committee:

**PETITION**

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We urge your approval of this bill.

Print Name	Signature	Address
June A. Akina	<i>June A. Akina</i>	98-379 Pono Street, Aiea, HI 96701
Lori Lee	<i>Lori Lee</i>	906 8th Avenue, Honolulu, HI 96816
Gail Sugita	<i>Gail Sugita</i>	1044 12th Ave. Wm 96816
Misty Torres	<i>Misty Torres</i>	PO Box 25843 Hon 96825
Rosalind Moore	<i>Rosalind Moore</i>	3358 ALOHA AVE. HON., HI 96816
Foss Dave	<i>Foss Dave</i>	45507 Nokolani St. Kaneohe 96744
Colleen Howard	<i>Colleen Howard</i>	439 Opihikao Pl., Hon., HI 96825
Regina V. Wong	<i>Regina V. Wong</i>	1577 Nelson St. Hanae, HI 96822
Colin Lau	<i>Colin Lau</i>	47-695 Hei Ulii St., Kaneohe 96744