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March 1, 2011

**The Honorable Gilbert S.C. Keith Agaran, Chair**

House Committee on Judiciary

State Capitol, Room 325

Honolulu, Hawaii 96813

**RE: H.B. 320, H.D. 1, Relating to Broker Price Opinions**

**HEARING: Tuesday, March 1, 2011 at 2:00 p.m.**

Aloha Chair Keith-Agaran, Vice Chair Rhoads and Members of the Committee:

I am Myoung Oh, Government Affairs Director of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its 8,500 members. HAR **strongly supports** H.B. 320, H.D. 1, which permits a real estate broker or salesperson to prepare a Broker Price Opinion ("BPO") for a fee where an appraisal is not required by law or otherwise.

A BPO is a tool used by real estate professionals to estimate the probable selling price of a piece of property. It includes local real estate market information, neighborhood analysis, and comparative properties that compare to the subject house that is being priced. Real estate professionals will continue to use BPOs to identify what other similar homes have sold for in the neighborhood.

Over the last several years, due to the economic crisis, loan delinquencies have increased, which in turn have required more BPOs to determine the market price of the collateral for these delinquent loans. Thus, each property that falls into distress may need at least one BPO, and more often two or more BPOs, to determine the most appropriate disposition of the property -- whether it be loan modification, short sale, or foreclosure.

For example, a lender might use a BPO to determine whether a short sale transaction should be approved, or whether a delinquent loan should be modified. In these types of situations, the BPO can assist with the decision to list, offer, sell, exchange, option, lease, or acquire real property in a real estate transaction, or alternatively, help struggling homeowners stay in their home.

As such, the role of the real estate professional has evolved from that of the traditional listing agent to today providing important, market-based information and data relating to home prices for lenders, mortgage companies and servicers, asset managers, loss mitigation companies, real estate investment trusts, private equity firms, and hedge funds.

REALTOR® is a registered collective membership mark which may be used only by real estate professionals who are members of the NATIONAL ASSOCIATION OF REALTORS® and subscribe to its strict Code of Ethics.





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HAR would note that, at the federal level, the Federal Deposit Insurance Corporation (FDIC) allows for the use of BPOs in its loan modification program. The U.S. Treasury also recognizes the use of BPOs to establish eligibility for its current mortgage rescue programs --- the Home Affordable Modification Program (HAMP) and Home Affordable Foreclosure Alternatives (HAFA). In addition, the recently enacted Dodd-Frank Act, which addresses financial regulatory reform, permits the use of BPOs, except that BPOs cannot be used as the primary basis for a loan for the purchase of residential property.

Most recently, the Nevada Supreme Court adopted the use of BPOs in addition to or in lieu of an appraisal in the Foreclosure Mediation Program.

Given the usefulness of BPOs, the current needs of the market are not met by restricting their use to the context of real estate sales, and disallowing the payment of compensation for this service. Under the current Hawai'i appraiser licensing rules, a real estate broker or salesperson is exempted from the appraisers law when providing BPOs, but can only provide a BPO if no compensation is given for the opinion, or if it is provided in the course of the sale of the property.

**HAR understands that the Hawai'i Real Estate Commission has raised some concerns with the measure as drafted, and in particular, the implications it would have for the Real Estate Commission. HAR has been working with the Real Estate Commission on language that will address these concerns, but still allow real estate licensees to provide BPOs.**

HAR respectfully requests you favorable consideration of this measure to allow for continued dialogue between HAR and the Real Estate Commission.

Mahalo for the opportunity to testify.

Enclosure



**PRESENTATION OF THE  
REAL ESTATE COMMISSION**

**TO THE HOUSE COMMITTEE ON  
JUDICIARY**

**TWENTY-SIXTH LEGISLATURE  
Regular Session of 2011**

**Tuesday, March 1, 2011  
2:00 p.m.**

**TESTIMONY ON HOUSE BILL NO. 320 H.D. 1, RELATING TO BROKER  
PRICE OPINIONS.**

**TO THE HONORABLE GILBERT S.C. KEITH-AGARAN, CHAIR,  
AND MEMBERS OF THE COMMITTEE:**

My name is Trudy Nishihara and I am the Chairperson of the Hawaii Real Estate Commission ("Commission"). The Commission appreciates the opportunity to present testimony on House Bill No. 320, H.D. 1, Relating to Broker Price Opinions and, since it addresses an important subject, supports this measure in concept.

House Bill No. 320 H.D. 1 creates a new chapter to regulate Broker Price Opinions. Section 26H-6, Hawaii Revised Statutes, 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.

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Therefore, the Commission strongly supports a sunrise study on this measure, as mandated by law, before regulating broker price opinions. Thank you for the opportunity to testify on this bill.



Hawaii Chapter

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February 28, 2011

Representative Gilbert S.C. Keith-Agaran, Chair  
Representative Karl Rhoads, Vice-Chair  
Committee on Judiciary  
Ted Yamamura, Government Relations Chair  
The Hawaii Chapter of the Appraisal Institute  
(808) 270-0604  
Tuesday, March 1, 2011

**Testimony in Support of HB 320, HD1, Relating to Broker Price Opinions**

The Hawaii Chapter of the Appraisal Institute is part of an international organization of professional real estate appraisers with nearly 26,000 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 support HB 320, HD1, and reiterate our position that the Bill correctly identifies Chapter 467, Hawaii Revised Statutes as the governing authority instead of Chapter 466K. Chapter 467, HRS, applies to Real Estate Brokers and Salespersons who are the preparers of BPO's. Chapter 466K, HRS, is limited to Real Estate Appraisers who prepare real estate appraisals.

Thank you for this opportunity to testify.

Ted Yamamura  
Government Relations Chair