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**PRESENTATION OF THE  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

TO THE HOUSE COMMITTEE ON  
CONSUMER PROTECTION AND COMMERCE

TWENTY-SIXTH LEGISLATURE  
Regular Session of 2011

Monday, March 14, 2011  
2:00 p.m.

**TESTIMONY ON SENATE BILL NO. 154, S.D. 1, RELATING TO BROKER PRICE  
OPINIONS.**

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

My name is Celia Suzuki, Acting Licensing Administrator for the Professional and  
Vocation Licensing Division, Department of Commerce and Consumer Affairs ("DCCA").

Thank you for the opportunity to present testimony on Senate Bill No. 154, S.D. 1,  
Relating to Broker Price Opinions. The DCCA supports the intent of the bill but has  
concerns with this measure as proposed.

This measure proposes to regulate the unregulated activity of allowing real estate  
brokers and salespersons, licensed under Chapter 467, Hawaii Revised Statutes  
("HRS"), to provide a Broker Price Opinion, valuing a specific parcel of real estate.

Currently, Chapter 466K, HRS, relating to Real Estate Appraisers, prohibits individuals from practicing as a real estate appraiser unless the individual is licensed or certified in accordance with this Chapter.

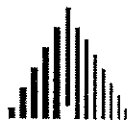
The DCCA requests the following amendments:

- Page 3 lines 4 – 7 – Insert “of” on line 6 after price, and delete all of the language after estate on lines 6 – 7, to read as follows:
  - (2) A real estate broker or salesperson licensed pursuant to chapter 467 who gives an opinion as to the estimated price of real estate[~~as provided in section 467 ———~~]; and
- Page 3, starting at line 8, insert the following into a new SECTION 3, to read as follows:
  - **“§466K-4 Practice as a real estate appraiser; uniform standards.** (a) No person may practice as a real estate appraiser in this State unless that person has been licensed or certified to practice in accordance with this chapter and rules adopted by the director of commerce and consumer affairs pursuant to chapter 91. All real estate appraisers who are licensed or certified to practice in this State shall comply with the current uniform standards of professional appraisal practice approved by the director when performing appraisals in connection with a federally or non-federally related real estate transaction.
  - (b) This section shall not apply to any real estate appraiser employed by any county for purposes of valuing real property for ad valorem taxation.

Testimony on Senate Bill No. 154, S.D. 1  
March 14, 2011  
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- (c) This section shall not apply to a real estate broker or salesperson licensed by this State pursuant to chapter 467, HRS, who gives an opinion as to the estimated price of real estate.”
- Page 3, line 8, renumber SECTION 3, to be SECTION 4; and
- Page 3, line 10, renumber SECTION 4, to be SECTION 5.

We request your favorable consideration of our suggested amendments to this bill. Thank you for the opportunity to testify.



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March 11, 2011

Representative Robert N. Herkes, Chair  
Representative Ryan I. Yamane, Vice-Chair  
Committee on Consumer Protection and Commerce  
Ted Yamamura, Government Relations Chair  
The Hawaii Chapter of the Appraisal Institute  
(808) 270-0604  
Monday, March 14, 2011

**Testimony Conditionally in Support of SB 154, SD1, 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 believe that broker price opinions ("BPOs") have a very legitimate role in the real estate marketplace. Traditionally, BPOs have been performed by real estate agents or brokers to assist buyers or sellers, or potential buyers or sellers, of residential real estate in determining an appropriate listing or offering price. In order to ensure the safety of users of broker price opinions, we are proposing an additional condition to ensure consistency in BPO development and reporting.

**PROPOSED CHANGES TO SB 154, SD1 - RELATING TO  
BROKER PRICE OPINIONS** (Proposed changes are highlighted in  
red and underscored)

(e) Written report; standards and guidelines. A broker's price opinion prepared under the authority granted in this Act shall be in writing and shall conform to the standards and guidelines published by a nationally recognized association of providers of broker price opinions. The Hawaii Real Estate Commission shall promulgate regulations that are consistent with, but not limited to, the standards and guidelines of a nationally recognized association of providers of broker price opinions.

We also offer a correction to §466K-1 (b)(2). "A real estate broker or salesperson licensed pursuant to chapter 467 who gives an opinion as to the estimated price of real estate as provided in section 467- ."

Finally, the Bill correctly identifies Chapter 467, Hawaii Revised Statutes 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.

We urge the Committee to adopt and incorporate our proposed amendment to the Bill, and urge the passage of an amended SB 154, SD 1. Thank you for this opportunity to testify.



Ted Yamamura  
Government Relations Chair

# HAWAII FINANCIAL SERVICES ASSOCIATION

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March 14, 2011

Rep. Robert N. Herkes, Chair,  
and members of the House Committee on Consumer Protection & Commerce  
Hawaii State Capitol  
Honolulu, Hawaii 96813

Re: **Senate Bill 154, SD 1 (Broker Price Opinions)**  
**Hearing Date/Time: Monday, March 14, 2011, 2:00 P.M.**

I am the attorney for the **Hawaii Financial Services Association** ("HFSA"). The HFSA is a trade association for Hawaii's consumer credit industry. Its members include Hawaii financial services loan companies (which make mortgage loans and other loans and which are regulated by the Hawaii Commissioner of Financial Institutions), mortgage lenders, and financial institutions.

The HFSA supports the intent of this Bill.

We had similarly supported the intent of a companion bill, House Bill 320 (Broker Price Opinions).

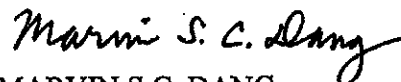
The purpose of this Bill is to: (1) permit a licensed real estate broker or real estate salesperson to prepare broker price opinions ("BPO") for use in real estate transactions where an appraisal is not required by law or otherwise; and (2) clarify that recovery from the real estate recovery fund is not available for complaints regarding broker price opinions.

When a mortgage lender is required by law or otherwise to use an appraisal, the lender does not use a BPO as a substitute for the appraisal. If an appraisal is required when a mortgage loan is being originated, a BPO is not used as an alternative to an appraisal.

However, a BPO can be used by a mortgage lender when a loan is in default or when there is a need for loss mitigation. A lender might obtain a BPO to: consider a borrower's request for a short sale, a deed in lieu of foreclosure, or a loan modification; determine how much to bid at a foreclosure auction; or decide on the price to resell a real property that the lender had acquired after a foreclosure sale. Because an appraisal is not required to be used in those situations, a BPO is an important tool for the lender.

To the extent that this Bill facilitates a real estate broker or a real estate salesperson to prepare a BPO for the use of a mortgage lender, we support the intent of this Bill.

Thank you for considering our testimony.



MARVIN S.C. DANG

Attorney for Hawaii Financial Services Association

(MSCD/hfsa)



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March 14, 2011

**The Honorable Robert N. Herkes, Chair**  
House Committee on Consumer Protection & Commerce  
State Capitol, Room 325  
Honolulu, Hawaii 96813

**RE: S.B. 154, S.D. 1, Relating to Broker Price Opinions**

**HEARING: Monday, March 14, 2011 at 2:00 p.m.**

Aloha Chair Herkes, Vice Chair Yamane 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 supports S.B. 154, S.D. 1, which permits a licensed real estate broker or real estate sales person to prepare broker price opinions for use in real estate transactions where an appraisal is not required by law or otherwise, and clarifies that recovery from the real estate recovery fund is not available for complaints regarding broker price opinions.

Real estate professionals often estimate the probable selling price of a piece of property. Their analysis 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 this tool 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 estimated analysis to determine the market price of the collateral for these delinquent loans. Thus, each property that falls into distress may need at least one price opinion, and more often two or more price opinions, 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 price opinion to determine whether a short sale transaction should be approved, or whether a delinquent loan should be modified. In these types of situations, the price opinion 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.

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HAR would note that, at the federal level, the Federal Deposit Insurance Corporation (FDIC) allows for the use of broker price opinions (BPO) 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 Hawaii Real Estate Commission has raised concerns regarding implementation of the measure, as drafted. 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. Accordingly, HAR believes that the attached language will accomplish the goal of allowing BPOs to be provided for compensation and will address implementation concerns.**

HAR respectfully requests your passage of this measure, with the attached amendments.

Mahalo for the opportunity to testify.





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# A BILL FOR AN ACT

RELATING TO BROKER PRICE OPINIONS

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

1           SECTION 1. Section 466K-4, Hawaii Revised Statutes, is  
2 amended to read as follows:

3           §466K-4 **Practice as a real estate appraiser; uniform**  
4 **standards.** (a) No person may practice as a real estate  
5 appraiser in this State unless that person has been licensed or  
6 certified to practice in accordance with this chapter and rules  
7 adopted by the director of commerce and consumer affairs  
8 pursuant to chapter 91. All real estate appraisers who are  
9 licensed or certified to practice in this State shall comply  
10 with the current uniform standards of professional appraisal  
11 practice approved by the director when performing appraisals in  
12 connection with a federally or non-federally related real estate  
13 transaction.

14           (b) This section shall not apply to any real estate  
15 appraiser employed by any county for purposes of valuing real  
16 property for ad valorem taxation.

17           (c) This section shall not apply to a real estate  
18 broker or real estate salesperson licensed under chapter 467 who

1 provides an opinion as to the estimated price of real estate,  
2 provided that the opinion as to the estimated price shall state  
3 that it is not an appraisal, and the real estate licensee shall  
4 not represent that the licensee is a certified or licensed real  
5 estate appraiser.

6 SECTION 3. Statutory material to be repealed is bracketed  
7 and stricken. New statutory material is underscored.

8 SECTION 4. This Act shall take effect on July 1, 2011.

9