

SB 975

**Measure
Title:**

RELATING TO APPRAISALS.

**Report
Title:**

Real Estate Appraisal Arbitration; Uniform Standards of Professional Appraisal Practice

Description:

Requires a real estate appraiser to comply with the Uniform Standards of Professional Appraisal Practice when acting as an appraiser or arbitrator in an arbitration proceeding.

Companion:

Package:

None

**Current
Referral:**

CPN



NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
335 MERCHANT STREET, ROOM 310
P.O. Box 541
HONOLULU, HAWAII 96809
Phone Number: 586-2850
Fax Number: 586-2856
www.hawaii.gov/dcca

KEALI'I S. LOPEZ
DIRECTOR

EVERETT KANESHIGE
DEPUTY DIRECTOR

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

TO THE SENATE COMMITTEE ON
COMMERCE AND CONSUMER PROTECTION

TWENTY-SIXTH LEGISLATURE
Regular Session of 2011

Monday, February 28, 2011
10:00 a.m.

TESTIMONY ON SENATE BILL NO. 975, RELATING TO APPRAISALS.

TO THE HONORABLE ROSALYN H. BAKER, 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. 975, Relating to Appraisals. The Department opposes this bill.

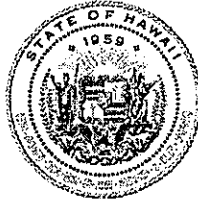
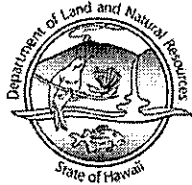
This bill seeks to require a real estate appraiser to comply with the Uniform Standards of Appraisal Practice ("USPAP") when acting as an appraiser or as an arbitrator in an arbitration to determine the fair market value of real estate.

Testimony on Senate Bill No. 975
Monday, February 28, 2011
Page 2

This bill seeks to amend the Real Estate Appraiser statute, §466K, H.R.S. and the Department believes this is not the appropriate statute for this amendment as it deals with arbitration.

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

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

WILLIAM J. AILA, JR.
INTERIM CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

GUY H. KAULUKUKUI
FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

**Testimony of
WILLIAM J. AILA, JR.
Chairperson**

**Before the Senate Committee on
COMMERCE AND CONSUMER PROTECTION**

**Monday, February 28, 2011
10:00 AM
State Capitol, Conference Room 229**

**In consideration of
SENATE BILL 975
RELATING TO APPRAISALS**

Senate Bill 975 requires a real estate appraiser to comply with the Uniform Standards of Professional Appraisal Practice (USPAP) when acting as an appraiser in an arbitration proceeding. The Department of Land and Natural Resources (Department) opposes this measure.

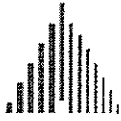
The Department's primary reason for opposing this bill is that it will substantially increase the costs of an arbitration proceeding without necessarily providing a corresponding benefit.

The Department's Land Division contracts for the majority of appraisals in the Department, primarily for valuations of fair market rent for new leases, lease reopenings, and easements, and for remnant sales. Each of these requires an appraisal and each is subject to arbitration, with the exception of remnant sales. The majority of our applicants, who generally are required to absorb the cost of the appraisals (exception: lease reopenings, for which the Department pays) and half the cost of any arbitration, would object to a more onerous and costly arbitration process.

Arbitration is customarily viewed as an alternative means to dispute resolution that is less costly, less contentious, and less time-consuming than litigation. Senate Bill 975, by requiring an arbitrator to follow USPAP, effectively adds a significant labor burden on the arbitrator, which will be reflected in their fees. A small percentage of our lessees might believe they will derive some benefit from Senate Bill 975, i.e. those that are paying significant lease rents of \$50,000 or \$100,000 or more a year, because of the economy of scale, but Senate Bill 975 applies indiscriminately to all arbitrations, and added arbitration fees would be a significant deterrent to the majority of our lessees.

Senate Bill 975 has been introduced to the Legislature in prior years, most recently in 2010. The Department has reviewed prior testimony both for and against, and one email in our files dated March 12, 2010 from Attorney Rosemary T. Fazio to the Governor's Office of the previous Administration was especially persuasive. She writes (this is an excerpt): "Further, arbitration awards cannot be appealed. Arbitration awards can only be 'vacated' based upon very limited statutory grounds – for example if the arbitrator were bribed by one of the parties. Hawaii Revised Statutes 658A-23. Because arbitration awards cannot be appealed, what difference does it make whether or not the arbitrators issue lengthy decisions? Unlike labor arbitrations, where the parties have an ongoing relationship which will be affected by an arbitration award, a rent arbitration just settles rent as of a specific point in time. It does not alter the conduct of the parties for the rest of the lease contract. It does not apply to future rent renegotiations, when the real estate market has changed."

For the forgoing reasons, the Department opposes this measure.



Appraisal Institute™

*Professionals Providing
Real Estate Solutions*

Hawaii Chapter

P.O. Box 2774
Honolulu, HI 96803
T 808-845-4994
F 808-847-6575
Email: bkcorp2@hawaiiantel.net
www.ai-hawaii.org

February 25, 2011

Senator Rosalyn H. Baker, Chair
Senator Brian T. Taniguchi, Vice-Chair
Consumer and Consumer Protection Committee
Ted Yamamura, Government Relations Chair
The Hawaii Chapter of the Appraisal Institute
(808) 270-0604
Monday, February 28, 2011

Testimony against SB 975, Relating to Appraisals

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 speak against SB 975, Relating to Appraisals, which would require a real estate appraiser to comply with the Uniform Standards of Professional Appraisal Practice "when acting as an appraiser or as an arbitrator in an arbitration proceeding to determine the fair market value, fair market rental or fair and reasonable rent 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 here¹.

We urge the Committee to deny the passage of SB 975. Thank you for this opportunity to testify.


Ted Yamamura
Government Relations Chair

¹ *Wong v. John F. Chalmers 1990 Revocable Trust*, Civil No. 94-811 DAE (D. Haw., Jan 24, 1996).



99-1046 Iwaena Street, Aiea, Hawaii 96701
Tel: (808) 486-2035 Fax: (808) 486-2718 Email: mkrealestate@juno.com

February 25, 2011

COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Senator Rosalyn H. Baker, Chair
Senator Brian T. Taniguchi, Vice Chair
Members of the Committee
415 South Beretania Street
Honolulu, Hawaii 96813

RE: Testimony in Support of SB 975 - Relating to Appraisals - Use of USPAP
Hearing: February 28, 2011, 10:00 A.M., Room 229

Dear Senators:

Please allow me to introduce myself. My name is Marcia Moreno, Principal Broker/Owner of MK Real Estate Services, LLC., located on the island of O'ahu.

I support passage of Senate Bill 975 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.

By passing Bill 975, I believe both parties in an appraisal/arbitration proceeding will be better served by the appraisers as they will be bound to follow the highest standards and practices applicable to their profession. Under USPAP's guidance, appraisers will be required to apply their full spectrum of consideration and the highest level of knowledge to the valuation engagement at issue.

With the value of real estate and rents reaching into the millions of dollars, the public is entitled to receive the best appraisal service possible and requiring USPAP will create the basis upon which a firm foundation and trust can be built.

February 25, 2011
Page Two
Testimony in Support of SB 975

Please support and pass Senate Bill 975.

Respectfully,

Marcia Moreno
Principal Broker/Owner
P.O. Box 434, Aiea, Hawaii 96701
marcia@mkrealestatehawaii.com
Office #: (808) 486-2035

JN Group, Inc.

fka WHOLESAL MOTOR, INC. ESTABLISHED IN 1981
2999 N. Nimitz Highway Honolulu, Hawaii 96819-1903
Phone: 808.831.2500 Fax: 808.831.2594 www.jnautomotive.com

February 24, 2011

JN Automotive Group

JN Chevrolet

COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Senator Rosalyn H. Baker, Chair
Senator Brian T. Taniguchi, Vice Chair

JN Mazda

Members of the Committee
415 South Beretania Street
Honolulu, HI 96813

Audi of Hawaii

**RE: Testimony in Support of SB 975 – Relating to Appraisals – Use of USPAP
Hearing: February 28, 2011, 10:00 am; Room 229**

Ferrari of Hawaii

Aloha Chair Baker, Vice-Chair Taniguchi and Members of the Committee,

Maserati of Hawaii

My name is Joe Nicolai and I own JN Group, Inc. and Cycle City, Ltd. which employs 390 people on the island of Oahu and Maui.

Lamborghini Hawaii

I support passage of Senate Bill 975 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.

Bentley Honolulu

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; however, even though the lease contract specifically call for a licensed appraiser to determine value, opponents argue that appraisers are arbitrators and should be exempt from USPAP. Judge Mollway recently disagreed with this opinion and the National Appraisal Subcommittee Executive Director James R. Park, wrote, "an appraiser is defined by USPAP as one who is expected to perform valuation services."

JN Lotus

La Collezione Nicolai

As such, I believe it is appropriate that the Hawaii Revised Statutes be amended to require appraisers to follow the nationally recognized ethical and professional standards of USPAP when a licensed appraiser is sitting on an appraisal/arbitration panel that will determine value or rental rates of real estate.

JN Car and Truck Rentals

JN Leasing

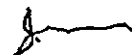
There should a single standard that real estate appraisers follow whether they are performing appraisals in or outside of an arbitration proceeding. Applying USPAP in all such circumstances will provide guidance and additional transparency in the process. Applying the highest standards of integrity will allow consumers, banks, lessees and lessors to have faith and trust in the outcomes and results. Appraisers should not shy away from their industry guidelines.

JN Advertising

JN Development

The passage of SB 975 will provide uniformity of valuations for real estate transactions whether within or outside of an arbitration proceeding. Please support SB 975 and approve this bill.

Mahalo,



Joseph P. Nicolai
2999 N. Nimitz Highway
Honolulu, HI 96819
Email: ctoma@jnautomotive.com
Phone: 808-831-2500Phone

February 28, 2011

COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Senator Rosalyn H. Baker, Chair

Senator Brian T. Taniguchi, Vice Chair

Members of the Committee

415 South Beretania Street

Honolulu, HI 96813

**RE: Testimony in Support of SB 975 – Relating to Appraisals – Use of USPAP
Hearing: February 28, 2011, 10:00 am, Room 229**

Aloha Chair Baker, Vice-Chair Taniguchi and Members of the Committee:

I write on behalf of Sony Hawaii, a division of Sony Electronics Inc. that has been doing business in Honolulu since 1968 and since 1985 has maintained operations in the Mapunapuna area under a ground lease. In addition to being a proud member of the Hawaiian business community, Sony Hawaii, along with Sony Corporation, sponsors the Sony Open golf tournament, the largest charity event in Hawaii and a tournament that has raised over \$10 million for local not-for-profits since 1999.

Sony Hawaii supports passage of Senate Bill 975 (SB 975). If enacted, SB 975 will provide companies like Sony Hawaii with the market certainty and consistency necessary to continue to invest and create jobs in Hawaii.

Senate Bill 975 would require 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 that the Hawaii Revised Statutes mandate the same ethical consideration when an appraiser is sitting on a panel that will ultimately determine the value or rental rates for real estate.

As suggested above, companies like Sony Hawaii cannot make important decisions that affect their ability to properly plan for future investment or hiring needs unless they have confidence that those directly affecting their cost of doing business act in a consistent and transparent manner. Indeed, with rents higher than ever and leases covering terms of a decade or more, the cost of such leases is one of the most important variables affecting the cash flow and profitability of a company doing business in Hawaii. How can a company be expected to take the risk inherent in building a new plant or hiring new employees when those determining one of its primary costs, arbitration appraisers, are not required to follow a fundamental set of standards?

Simply put, there should be a single standard that real estate appraisers follow whether they are performing appraisals in or outside of an arbitration proceeding. Applying USPAP in all such circumstances would provide additional transparency and trust in the process and results.

Sony Hawaii urges you to support SB 975.

Mahalo,



Karl Okemura
Senior Vice President
Sony Hawaii Company
960 Mapunapuna Street
Honolulu, Hawaii 96819
Telephone 808-834-6611
Fax 808-834-1459
karl.okemura@am.sony.com



215A Railroad Ave., Hilo, HI 96720 • Ph: (808) 935-8595 • Fax: (808) 935-1698
 800 Alua St., Wailuku, Maui, HI 96793 • Ph: (808) 244-9158 • Fax: (808) 242-5815
 1856 Haleukana St., Lihue, Kauai, HI 96766 • Ph: (808) 245-8472 • Fax: (808) 246-6156
 74-5039B Queen Kaahumanu Hwy., Kailua, Kona, HI 96740 • Ph: (808) 326-1212 • Fax: (808) 326-1822
 918 Ahua Street, Honolulu, HI 96819 • Ph: (808) 839-7202 • Fax: (808) 839-9813 • PARTS Ph: (808) 839-7707

February 25, 2011

COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Senator Rosalyn H. Baker, Chair
 Senator Brian T. Taniguchi, Vice Chair
 Members of the Committee
 415 South Beretania Street
 Honolulu, HI 96813

RE: Testimony in Support of SB 975 – Relating to Appraisals – Use of USPAP
Hearing: February 28, 2011, 10:00 am, Room 229

Aloha Chair Baker, Vice-Chair Taniguchi and Members of the Committee,

My name is Phillip J. Silich and I own Bacon Universal Co., Inc. which employs 38 people on the island of Oahu and 27 people on the Islands of Kauai, Maui and Big Island.

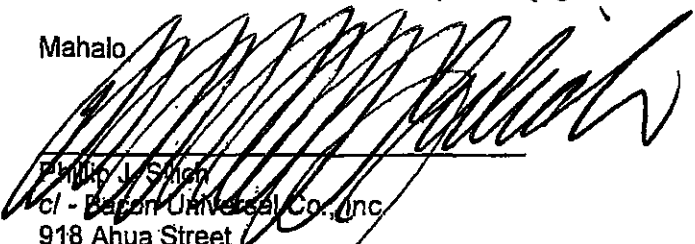
This testimony is in support of Senate Bill 975 which requires real estate appraisers to comply with Uniform Standards of Professional Appraisal Practices (USPAP) when acting as an appraiser or an arbitrator in an arbitration proceeding to determine the fair market value, fair market rental or fair and reasonable rents of real estate.

At present all appraisals must be by common law use USPAP. Furthermore in a recent judgment, Judge Mollway re-confirmed that an arbitrator is duty bound to use USPAP which was again confirmed by Mr. James R. Park, Executive Director of the National Appraisal subcommittee who also in his writing concluded " An appraiser is defined by USPAP as one who is expected to Perform Valuation Services".

Thus, in the interests of fair and clear transparency to all leasehold tenants throughout the Hawaiian Islands it is imperative that the Hawaii Revised Statutes be amended to require appraisers to follow this Nationally recognized ethical and professional standard. Please note that USPAP was introduced to remedy the Savings and Loan Fiasco of some 20 years ago where by appraisers failed dismally to value property in a fair, clear and uniform manner.

Therefore the passing of SB975 will provide uniformity of valuations for real estate transactions whether within or outside of an arbitration proceeding. Please support SB 975 and approve this bill.

Mahalo



Phillip J. Silich
 CI - Bacon Universal Co., Inc.
 918 Ahua Street
 Honolulu, HI 96819
 Phone: 808-839-7202
 Fax: 808-839-9813
 Email: PSilich@baconuniversal.com

McCully Works

40 Kamehameha Ave.
Hilo, Hi. 96720

February 25, 2011.

In SUPPORT of SB-975- Relating to Appraisal

Committee on Commerce and Consumer Protection
Hon. Senator R. Baker, Chair
Hon. Senator B. Taniguchi, Vice-Chair

Aloha Senators Baker, Taniguchi, and Members,

I am a small businessman in Hilo who is a Lessee of commercial leasehold property both on the Island of Hawaii and Oahu. I have purchased or constructed the leasehold improvements in order to provide warehouse and commercial space and services to more than 40 small businesses' that employ more than 200 workers. This has made me acutely aware of the need to provide clarity to consumers in how appraisal practice is conducted in our State. There is a real problem that needs to be addressed.

Senate Bill 975 would require Appraisers to follow the national, and Federally mandated standard known as U.S.P.A.P. , the Uniform Standards for Professional Appraisal Practice. This issue has been active for almost 15 years, I refer you to the Office of the State Auditors report of 1998, Report No. 98-13. Appraisers, landowners, and real estate attorneys are likely to oppose this legislation. They have in the past, and the position they take is that there are no problems with the way things are, so why change it. This is simply not true. Our state is periodically victimized by real estate bubbles that distort the value of our lands, that is why it is imperative that we improve the way leasehold arbitrations are conducted.

Please support SB977 and the survival of small business in the State of Hawaii.

Aloha,

«GreetingLine»

McCully Works
40 Kamehameha Ave.
Hilo, Hi. 96720
808-933-7000

KAKILEPO, LLC
1577 Nehoa Street, Honolulu, HI 96822
Phone: (808) 944-4663

February 24, 2011

Honorable Senator Rosalyn H. Baker, Chair
Honorable Senator Brian T. Taniguchi, Vice Chair
Members of the Senate Committee on Commerce and Consumer Protection

RE: **SENATE BILL SB975 (Relating to Appraisals)**
HEARING: February 28, 2011 at 10:00 a.m. in Room 229

Dear Honorable Chair Rosalyn Baker and Members of the Senate Committee on Commerce and Consumer Protection:

I support passage of Senate Bill SB975 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. Without complying with USPAP, real estate appraisers performing an appraisal valuation in arbitration proceedings could arrive at a different value than if they were appraising the same property in connection with federally or non-federally related real estate transactions.

The passage of SB975 will provide for uniformity of valuations of real estate whether it's a federally or non-federally related real estate transaction or an arbitration proceeding.

Please approve Senate Bill SB975.

Aloha,



Napualani V. Wong
Manager

Donald Lau
535 Paikau Street
Honolulu, HI 96816

February 24, 2011

Honorable Senator Rosalyn H. Baker, Chair
Honorable Senator Brian T. Taniguchi, Vice Chair
Members of the Senate Committee on Commerce and Consumer Protection

RE: **SENATE BILL SB975**
HEARING DATE/TIME/LOCATION: February 28, 2011, 10:00AM, RM 229

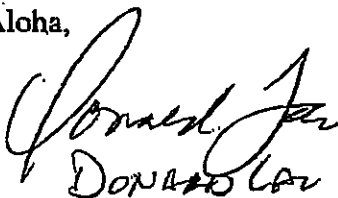
Dear Honorable Chair Rosalyn Baker and Members of the Senate Committee on Commerce and Consumer Protection:

I support passage of Senate Bill SB975 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. Without complying with USPAP, real estate appraisers performing an appraisal valuation in arbitration proceedings could arrive at a different value than if they were appraising the same property in connection with federally or non federally related real estate transactions.

The passage of SB975 will provide for uniformity of valuations of real estate whether it's a federally or non-federally related real estate transaction or an arbitration proceeding.

Please approve Senate Bill SB975.

Aloha,



DONALD LAU

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
OSWALD STENDER, DIRECTOR
MICHAEL STEINER, EXEC. DIRECTOR

February 28, 2011

COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Senator Rosalyn H. Baker, Chair
Senator Brian T. Taniguchi, Vice Chair
Members of the Committee
415 South Beretania Street
Honolulu, HI 96813

Testimony in Support of SB 975 – Relating to Appraisals – Use of USPAP

Hearing: February 28, 2011, 10:00 am; Room 229

Aloha Chair Baker, Vice-Chair Taniguchi and Members of the Committee,

My name is Michael Steiner and I am the Executive Director of Citizens for Fair Valuation (CFV), a non-profit coalition of lessees. I support passage of Senate Bill 975 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 appraisal/arbitration proceeding to determine the fair market value, fair market rental or fair and reasonable rents of real estate.

Under HRS 466K-4, real estate appraisers are required to comply with USPAP when performing appraisals in connection with federally or non-federally related real estate transactions. CFV strongly believes it is entirely appropriate to extend the same professional and ethical requirements to those appraisers who sit on appraisal/arbitration panels which determine fair market value, fair market rental or fair and reasonable rents of real estate.

Lease Contracts call for “Appraisal” not “Arbitration”:

When the lessor and lessee cannot negotiate a mutually acceptable valuation for rents or market value, most commercial ground leases call for “appraisal” — not “arbitration”. The following comes from a typical Damon Estate lease, currently in force with Commonwealth REIT:

Appraisal. In case the parties hereto shall fail to agree on the net annual rent hereunder payable . . . [said rent] shall be determined by three impartial real estate appraisers . . . (who shall in this case be a member of the Honolulu Chapter of the American Institute of Real Estate Appraisers or other similar organization) . . . and the three appraisers so appointed shall thereupon proceed to determine the matter in question and the decision of said appraisers or a majority of them shall be final, conclusive and binding upon both parties.

The Damon Estate leases, as is true with most other commercial leases, use the term “appraisal” to refer to the process in which the panel of appraisers is to determine the rent or market value. The term “arbitration” is not used anywhere in the lease contract. However, our judicial system has come to consider the term “appraisal,” when coupled with “final and binding,” to mean arbitration. Regardless of

the term, it is clear that the appraisers who sit on the appraisal panel are engaged to determine the fair market value, fair market rental or fair and reasonable rents of real estate.

Lease Contracts Require Appraisers to Set Rents:

As shown above, most commercial ground leases specifically call for licensed appraisers to sit as appraiser/arbitrators. This was done for the obvious reason that their training and experience makes them more qualified than a lay person. Indeed, in a 1996 deposition, local attorney Bert Kobayashi stated,

It is ordinarily the function of appraisers to appraise market value of real property. By specifying the use of appraisers as the means of determining new rent, the subject leases obviously contemplated that the new ground lease rent will be determined in accordance with the standards, training, and expertise normally employed by appraisers in the evaluation of market rents...

National Appraisal Subcommittee:

In a February 2, 2010 letter, National Appraisal Subcommittee, Executive Director James R. Park wrote,

... an appraiser is defined by USPAP as one who is expected to perform valuation services ... When acting as an appraiser performing appraisal practices, compliance with USPAP is required. According to USPAP, an individual is performing *appraisal practice* when providing valuation services, including by not limited to appraisal, appraisal review or appraisal consulting.

Park clarified that,

USPAP states the use of other nomenclature for an appraisal, appraisal review, or appraisal consulting assignment (e.g., analysis, counseling, evaluation, study, submission, or valuation) does not exempt an appraiser from adherence to USPAP.

Professional Appraisers:

Appraisers should be held to the highest standards of their profession. This is especially true when engaged to perform "*appraisal practice*" as an appraisal/arbitration panelist in order to determine fair market value, fair market rental or fair and reasonable rents of real estate. Page 203 of Advisory Opinion 21 of the 2004 version of USPAP states,

Many appraisers have professional roles in addition to their appraiser roles. For example, some appraisers are also attorneys, accountants, brokers, or consultants. Appraisers sometimes also encounter questions in their personal lives about value. An appraiser who contemplates providing a valuation service in some other professional capacity should use special care in establishing whether that service is truly not part of appraisal service. **[A]ny valuation service by an appraiser falls within appraisal practice. If a person's identity as an appraiser, appraisal expertise, and ethical reputation contribute to his or her being chosen to provide a service, that service likely is included in appraisal practice. As such, that service should be performed in compliance with USPAP.**

It is clear that when an appraiser sits on an arbitration panel to determine the fair market value or rent of a property, that appraiser is providing a valuation service. Indeed, the lease document establishes the appraisal/arbitration process as the final and binding determination of value. As such it is the appraiser, sitting on the arbitration panel, who determines the ultimate valuation or rent of a property and the Uniform Standards of Professional Appraisal Practices (USPAP) must apply.

Appraisers are NOT exempt from statutory requirements when acting as Arbitrators:

Opponents of this bill will argue that regardless of the lease contract requirement to engage licensed appraisers, appraisers are acting as arbitrators and not appraisers when impaneled to perform an appraisal/arbitration. Opponents will cite the matter of Wong vs. Chalmers 1990 Revocable Trust, Civil No. 94-811 DAE (D. Haw., Jan 24, 1996), wherein Judge Ezra wrote,

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.

However, this position was directly addressed and dismissed by Judge Susan Oki Mollway in the recent matter of HRPT Properties vs. Linda Lingle, 2009 WL5103309 (D. Hawaii Dec. 23, 2009). Judge Mollway specifically countered this argument and addressed Judge Ezra's opinion as follows,

This argument misreads Judge Ezra's ruling. Whether rent had to be set by appraisers in that case had been disputed, and a court order had issued compelling arbitration. In characterizing the appraisers as arbitrators, Judge Ezra was rejecting a lessee's argument that the lessor had "disregarded the law by not following professional standards for appraisers." **In no way did Judge Ezra suggest that appraisers acting as arbitrators were free to ignore a statute imposing requirements on appraisers.** When Judge Ezra said, "the fact that the arbitrators were required to be licensed appraisers is immaterial here," **he was certainly not saying that arbitrators required to be licensed appraisers were unrestrained by statutory requirements applicable to appraisers.** (emphasis added)

Added Expenses:

Opponents of this bill will argue that SB 975 will cause additional expense and time in rendering awards. This is simply not the case. Appraisers are currently charging between \$15,000 and \$25,000 each for their services on an arbitration panel. This typically includes background work, two days of hearings and finalization. Assuming \$20,000 per appraiser and a total of 40 hours work, the average hourly rate is \$400 per hour. At this rate, most lessees involved in arbitration, with total costs surpassing easily surpassing \$75,000, would gladly pay an extra thousand or two to know that the panel followed the highest standards of the profession.

Vacating an Award:

Opponents of this bill seem to be afraid that SB 975 will create a basis for lessees to vacate arbitration awards. Again, this is just not the case. The truth is that it remains extremely difficult to vacate the award of an arbitration panel. Arbitration awards are given wide deference by the courts and judicial review is limited. There are only certain enumerated grounds under which an arbitration award can be vacated,

Citizens for Fair Valuation
Testimony in Support of Senate Bill 977 – Relating to Appraisal
Hearing Date Tuesday, February 28, 2010, 10:00 AM, Room 229

which include evident partiality of the panel, corruption of the panel, misconduct of the panel, and the panel exceeding its powers. Mistakes of law or fact by the panel in making its award are generally not sufficient grounds to vacate an arbitration award.

Single Standard:

Citizens for Fair Valuation believes there should a single standard that real estate appraisers follow whether they are performing appraisals in or outside of an arbitration proceeding. By applying USPAP in all such circumstances, the appraisal community can be assured the public will hold them in their highest regard. Requiring conformance with USPAP will add much needed transparency to the process and results, and this will ultimately enhance public trust in the process and results.

The passage of SB 975 will provide uniformity of valuations for real estate transactions whether within or outside of an arbitration proceeding. Please support SB 975 and approve this bill.

Mahalo

Michael Steiner

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

**CENTRAL PARK COMMUNITY ASSOCIATION
99-1046 IWAENA STREET
AIEA, HAWAII 96701**

February 24, 2011

Committee On Commerce And Consumer Protection
Senator Rosalyn H. Baker, Chair
Senator Brian T. Taniguchi, Vice-Chair
Members of the Committee
415 South Beretania St.
Honolulu, HI 96813

RE: Testimony in Support of SB 975 – Relating to Appraisals – Use of USPAP
Hearing Date: February 28, 2011, 10:00 am, Room 229

Dear Senators Baker, Taniguchi and Members of the Committee,

My name is William S. Alexander and I am the President of Central Park Community Association (CPCA) in Halawa Valley on Oahu. I am writing to you to express strong support for passage of Senate Bill SB 975 which would require real estate appraisers to comply with their national professional standards (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 rent of real estate.

CPCA was formed in 1982 and is an association of businesses that operate in Central Park, Halawa Valley and are land lessees in that Park. Our members and their sub-tenants employ hundreds of individuals and most members are small businesses as are their tenants.

Current law requires all appraisers to comply with USPAP when performing appraisals in connection with real estate transactions; however, even when a lease contract specifically calls for a licensed appraiser to determine value, opponents of this bill will argue that appraisers acting as arbitrators in determining value and rent should be exempt from USPAP in direct violation of these national standards which are observed every where else in the US.

Hawaii Revised Statutes should be amended to require all appraisers in Hawaii to follow the nationally recognized ethical and professional standards established in USPAP whether appraising or establishing value as an arbitrator in real estate transactions. There should be a single standard for all such transactions including the establishment of land rent.

As businesses and lessees we are acutely aware of the critical role land rent plays in the survival and success of our businesses. SB 975 should help our lessees of commercial/industrial land when appraisers are arbitrating new rent or appraising real

estate for fair market value for establishing rent. Given the dominance of seven land owners in the ownership of such land in Hawaii and their influence on the appraisal industry and appraisers, law such as SB 975 is needed to help keep excessive land rent increases from destroying many small businesses in the State and saving the jobs of their thousands of employees.

The market for such land is very limited in Hawaii as the seven large land owners do not wish to sell thus creating an artificial scarcity which leads to high land valuations which are not economically justified. Land rent needs to be fair and reasonable if Hawaii is to continue to be economically successful. Excessive land rent destroys businesses and constantly drains Hawaii businesses of working capital and sends much of the rent collected out of the State to the further detriment of our economy.

Most of our industrial areas are rundown and not great places to operate a business. Lessees often can't afford to maintain their buildings and improvements due to high land rent. Such conditions lead to lower productivity and higher costs in the long run. Passage of SB 975 would be a step in the right direction to improve this situation.

Please support SB 975 and its passage into law. Thank you for your consideration of my testimony.

Mahalo,

William S. Alexander, President
208-265-0270
wsalema@aol.com
Also President of Earle M. Alexander, Ltd
Lessee at 99-1046 Iwaena St. Aiea, Hi 96701

February 25, 2011

VIA FACSIMILE

586-6659

Honorable Senator Rosalyn H. Baker, Chair
Honorable Senator Brian T. Taniguchi, Vice Chair
Members of the Senate Committee on Commerce and Consumer Protection

**RE: SENATE BILL SB975 - RELATING TO APPRAISALS
HEARING SCHEDULED FOR MONDAY, FEBRUARY 28, 2011,
AT 10:00 A.M., HAWAII STATE CAPITOL, CONFERENCE ROOM 229**

Dear Honorable Chair Rosalyn Baker, Vice Chair Brian Taniguchi, and Members of the Senate Committee on Commerce and Consumer Protection:

I wish to support passage of Senate Bill SB975 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. Without complying with USPAP, real estate appraisers performing an appraisal valuation in arbitration proceedings could arrive at a different value than if they were appraising the same property in connection with federally or non-federally related real estate transactions.

The passage of SB975 will provide for uniformity of valuations of real estate whether it's a federally or non-federally related real estate transaction or an arbitration proceeding.

Please approved Senate Bill SB975.

Sincerely,



Print Name: Lori Lee

Address: 906 6th Avenue

Honolulu, Hawaii 96816

Anthony Martyak
520 Lunalilo Home Road, #115
Honolulu, HI 96825

February 24, 2011

Honorable Senator Rosalyn H. Baker, Chair
Honorable Senator Brian T. Taniguchi, Vice Chair
Members of the Senate Committee on Commerce and Consumer Protection

RE: **SENATE BILL SB975**
HEARING DATE/TIME/LOCATION: February 28, 2011, 10:00AM, RM 229

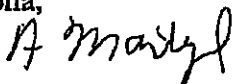
Dear Honorable Chair Rosalyn Baker and Members of the Senate Committee on Commerce and Consumer Protection:

I support passage of Senate Bill SB975 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. Without complying with USPAP, real estate appraisers performing an appraisal valuation in arbitration proceedings could arrive at a different value than if they were appraising the same property in connection with federally or non federally related real estate transactions.

The passage of SB975 will provide for uniformity of valuations of real estate whether it's a federally or non-federally related real estate transaction or an arbitration proceeding.

Please approve Senate Bill SB975.

Aloha,



Anthony P. Martyak

February 24, 2011

Honorable Senator Rosalyn H. Baker, Chair
Honorable Senator Brian T. Taniguchi, Vice Chair
Members of the Senate Committee on Commerce and Consumer Protection

RE: **SENATE BILL SB975**

HEARING DATE/TIME/LOCATION: February 28, 2011, 10:00AM, RM 229

Dear Honorable Chair Rosalyn Baker and Members of the Senate Committee on Commerce and Consumer Protection:

I support passage of Senate Bill SB975 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. Without complying with USPAP, real estate appraisers performing an appraisal valuation in arbitration proceedings could arrive at a different value than if they were appraising the same property in connection with federally or non federally related real estate transactions.

The passage of SB975 will provide for uniformity of valuations of real estate whether it's a federally or non-federally related real estate transaction or an arbitration proceeding.

Please approve Senate Bill SB975.

Aloha, 

MIGNON RHEE
1729 Kalaala Pl.
Hon. HI 96821

JAMES W. Y. WONG
3737 Manoa Road
Honolulu, Hawaii 96822
Phone: (808) 946-2966 Fax: (808) 943-3140

February 24 2011

Honorable Senator Rosalyn H. Baker, Chair
Honorable Senator Brian T. Taniguchi, Vice Chair
Members of the Senate Committee on Commerce and Consumer Protection

RE: **SENATE BILL SB975**

HEARING DATE/TIME/LOCATION: February 28, 2011, 10:00AM, RM 229


Dear Honorable Chair Rosalyn Baker and Members of the Senate Committee on Commerce and Consumer Protection:

I support passage of Senate Bill SB975 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. Without complying with USPAP, real estate appraisers performing an appraisal valuation in arbitration proceedings could arrive at a different value than if they were appraising the same property in connection with federally or non federally related real estate transactions.

The passage of SB975 will provide for uniformity of valuations of real estate whether it's a federally or non-federally related real estate transaction or an arbitration proceeding.

Please approve Senate Bill SB975.

Aloha,



February 24, 2011

COMMITTEE ON COMMERCE AND CONSUMER PROTECTION Senator Rosalyn H. Baker, Chair
Senator Brian T. Taniguchi, Vice Chair Members of the Committee
415 South Beretania Street
Honolulu, HI 96813

RE: Testimony in Support of SB 975 - Relating to Appraisals - Use of USPAP
Hearing: February 28, 2011, 10:00 am, Room 229

Aloha Chair Baker, Vice-Chair Taniguchi and Members of the Committee,

My name is Chelsey Kojima and we have a family-owned business, Mutual Plumbing Supply, which employs 15 people on the island of Oahu.

I support passage of Senate Bill 975 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.

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; however, even though the lease contract specifically call for a licensed appraiser to determine value, opponents argue that appraisers are arbitrators and should be exempt from USPAP. Judge Mollway recently disagreed with this opinion and the National Appraisal Subcommittee Executive Director James R. Park, wrote, "an appraiser is defined by USPAP as one who is expected to perform valuation services."

As such, I believe it is appropriate that the Hawaii Revised Statutes be amended to require appraisers to follow the nationally recognized ethical and professional standards of USPAP when a licensed appraiser is sitting on an appraisal/arbitration panel that will 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 an arbitration proceeding. Applying USPAP in all such circumstances will provide guidance and additional transparency in the process. Applying the highest standards of integrity will allow consumers, banks, lessees and lessors to have faith and trust in the outcomes and results. Appraisers should not shy away from their industry guidelines.

The passage of SB 975 will provide uniformity of valuations for real estate transactions whether within or outside of an arbitration proceeding. Please support SB 975 and approve this bill.

Mahalo

Chelsey Kojima

Mutual Plumbing Supply Co., Inc.
2812 Awaawaloa Street
Honolulu, HI 96819
PH: (808) 839-9076
FAX: (808) 833-2085
mutualpls@hawaiiantel.net

February 24, 2011

COMMITTEE ON COMMERCE AND CONSUMER PROTECTION Senator Rosalyn H. Baker, Chair
Senator Brian T. Taniguchi, Vice Chair Members of the Committee
415 South Beretania Street
Honolulu, HI 96813

RE: Testimony in Support of SB 975 - Relating to Appraisals - Use of USPAP
Hearing: February 28, 2011, 10:00 am, Room 229

Aloha Chair Baker, Vice-Chair Taniguchi and Members of the Committee,

My name is Allison Kojima and we have a family-owned business, Mutual Plumbing Supply, which employs 15 people on the island of Oahu.

I support passage of Senate Bill 975 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.

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; however, even though the lease contract specifically call for a licensed appraiser to determine value, opponents argue that appraisers are arbitrators and should be exempt from USPAP. Judge Mollway recently disagreed with this opinion and the National Appraisal Subcommittee Executive Director James R. Park, wrote, "an appraiser is defined by USPAP as one who is expected to perform valuation services."

As such, I believe it is appropriate that the Hawaii Revised Statutes be amended to require appraisers to follow the nationally recognized ethical and professional standards of USPAP when a licensed appraiser is sitting on an appraisal/arbitration panel that will 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 an arbitration proceeding. Applying USPAP in all such circumstances will provide guidance and additional transparency in the process. Applying the highest standards of integrity will allow consumers, banks, lessees and lessors to have faith and trust in the outcomes and results. Appraisers should not shy away from their industry guidelines.

The passage of SB 975 will provide uniformity of valuations for real estate transactions whether within or outside of an arbitration proceeding. Please support SB 975 and approve this bill.

Mahalo

Allison Kojima
Mutual Plumbing Supply Co., Inc.

2812 Awaawaloa Street
Honolulu, HI 96819
PH: (808) 839-9076
FAX: (808) 833-2085
allisonkmps@hawaiiantel.net