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February 27, 2011
State of Hawaii
Hawaii Senate
Committee on Commerce and Consumer Protection
Honolulu, HI

RE: SB 975 Hearing Date: February 28, 2011; Conference Room 229

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

The core reason that our nation's financial markets are currently in such a mess, is a direct result of the lack of accountability and transparency in the real estate valuation process (appraisals). If the real estate valuations were conducted properly, the parties to the real estate transactions would have been far less likely to be able to abuse the system, to the extent that many did.

Please pass SB 975.

This bill will bring much needed transparency and accountability to Hawaii's real estate valuation process, whether the valuation is taking place via the marketplace or via an arbitration.

A similar bill was introduced in 2009 (SB 771), and during a Hawaii senate committee, the Senate committee posed the question to one of the parties testifying against this bill, and asked if there are already safeguards in the system that address the accountability and transparency issues that bill seeks to correct.

The party that testified, stated that there are such safeguards and he went on to specify that HRS 658 (the Hawaii arbitration statute) accomplished the safeguards.

Please note that during that year's legislative session, testimony against that bill was provided by the Hawaii chapter of the Appraisal Institute. In their testimony they reference the Hawaii case of Wong v. Chalmers. That case actually specifies that the arbitrator in a real estate matter is not bound by the USPAP standards, or for that matter, any other accountability or transparency standards.

Whereas it appears from the testimony that the Hawaii chapter of the Appraisal Institute and the others that oppose SB 975, are in agreement that an arbitrator in a real estate value or rental dispute is not (and should not be) required to follow any standard, and further is not (and should not be) subject to any accountability or transparency in their decision making, please note:

That these testifiers are doing everything they can to keep this "black box" decision making process intact; --- this is in contrast to the supporters of SB 975, who are trying hard to replace the "black box" arbitration awards when involving real estate matters,

with a level of transparency and accountability that will allow the term "fair" to stay in the concept of "fair market value" or "fair market rental".

The cost to Hawaii is too great to allow this "black box" decision making to continue in the real estate sector; especially when one considers Hawaii's disproportionately large percentage of long term leases that much of Hawaii's businesses and employment base relies on.

Every dollar that a business is required to spend on overpriced real estate or an excessively high rental rate, takes away dollars that can otherwise be spent for growing and expanding businesses and employment.

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.

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 have the valuation supported by appropriate documentation. Unfortunately, during the past several years, these USPAP rules were not enforced.

Again, when considering that an arbitrator's award is so difficult (nearly impossible) to change, the need for this bill becomes even more apparent. And in the case of real estate valuation matters, the results usually have long-term affects.

Additionally, the notion that requiring USPAP rules & standards, would add unwarranted costs to a valuation process, is completely unfounded. If a bank even attempted to pass-off real estate appraisal valuations, that do not meet the USPAP standards, that bank would find itself in quite troubling waters with its banking regulator. If the requirement to use USPAP is economically feasible when valuing a home with a value of a Few Hundred Thousand dollars, then certainly, the economic feasibility of requiring USPAP in valuation matters (whether sales or rentals) that involve Millions and/or Multi-Millions of dollar property values, is also cost effective. The cost of abuse without USPAP, by and far, outweigh any notion of additional cost (if any) of requiring USPAP.

The passing of this bill will cost the state nothing, but without this bill, there are many businesses that may be forced to shut their doors as a result of "black box" arbitrations in real estate matters. And since so many Hawaii businesses have arbitration clauses in their leases, Hawaii businesses have been and continues to be, especially vulnerable.

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.

Thank you.
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