
A BILL FOR AN ACT

RELATING TO APPRAISALS.

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

1 SECTION 1. The legislature finds there is a continuous
2 pattern of industrial and commercial land ownership in Hawaii
3 being concentrated in large landholdings by trusts, a few
4 individuals, and the State, that limit the economic use of real
5 property to long-term ground leases. On Oahu, this amounts to
6 more than fifty per cent of all zoned and developed lands. With
7 the vast majority of commercial- and industrial-zoned land being
8 held by lessors and owner-users, only a small percentage of
9 property is available at any one time. When certain economic
10 climates occur, the scarcity of available properties creates
11 what amounts to an auction, with buyers bidding beyond the
12 underlying economic value of the property. This has led to
13 ground rents that can exceed the value of the space rent of the
14 fully improved properties. This situation is economically
15 unsound, lacks fairness, and creates inequities that harm
16 Hawaii's business and economic development, as well as working
17 and retired taxpayers.



1 These inequities are fostered by the fact that most ground
2 leases have provisions that require ground rent to be
3 periodically reset. If the lessor and lessee cannot agree to a
4 new ground rent, these leases contain provisions for dispute
5 resolution through binding arbitration conducted in accordance
6 with chapter 658A, Hawaii Revised Statutes. These leases also
7 commonly contain provisions by which only qualified appraisers,
8 licensed or certified by the State, are to be appointed to serve
9 on the arbitration panels. Hence, members of the same
10 profession gather and select market data, present the data to
11 arbitration panels as expert witnesses, and decide the matter as
12 appointed arbitrators. The appraisal industry in Hawaii has
13 relatively few appraisers who specialize in these matters, and
14 these individuals or firms are the exclusive determiners of what
15 constitutes the market value of leasehold property in Hawaii.
16 Billions of dollars of property, and hundreds of millions of
17 dollars in lease rents, are controlled by lease contracts that
18 are conducted in a manner that conflicts with the concepts of
19 "market value" and arms-length, open market transactions.

20 Compounding this problem of property valuation is that
21 Hawaii's courts, in order to encourage efficient dispute
22 resolution, provide broad powers to arbitrators and protect the



1 process through statutory restrictions on modifying or vacating
2 an arbitrator's decisions. Further, Hawaii's courts have
3 provided arbitrators with broad powers to make legal
4 determinations, for which they have no required training, to
5 interpret the construction of the terms of the contract. This
6 has led to appraisers in Hawaii acting as appraiser, lawyer, and
7 judge while functioning as arbitrators, with limited or no
8 grounds for appeal based on errors of either judgment or fact.

9 To establish a true "market value" of property, the most
10 important component is information about the interested buyer,
11 the interested seller, and the underlying economic value of the
12 property itself. In a residential property market, for single
13 family homes or condominiums, this information is widely
14 available. However, in valuing commercial leasehold lands, this
15 information is closely held by the owners of the property and
16 the appraisers who value the property. Arbitrations to
17 determine the rent for leasehold property are expensive and
18 time-consuming, and are made even more inefficient by the
19 secretive nature of the process for resetting rents.
20 Historically, only final determinations of arbitration
21 proceedings were reported, with no other information made
22 available as to how the matter was determined. The legislature



1 recently addressed this problem with the passage of Act 227,
2 Session Laws of Hawaii 2011, which required real estate
3 appraisers acting as arbitrators to fully report the basis for
4 the award, and to comply with nationally accepted standards when
5 valuing the properties and determining market value or market
6 rent. However, since the passage of this law, confidentiality
7 clauses have been incorporated into the agreements that govern
8 individual arbitration panels. Such confidentiality provisions
9 frustrate the legislature's intent in passing Act 227, and
10 provide exclusive advantage to lessors and appraisers by
11 withholding information that would benefit other market
12 participants.

13 The purpose of this Act is to improve and protect the
14 process by which real estate appraisers, when acting as
15 arbitrators, determine fair market value, fair market rent, or
16 fair and reasonable rent, of leasehold property, by ensuring
17 that the information necessary to accurately determine the
18 economic value of the property is available to all interested
19 participants in the market. This Act also requires the parties
20 to the arbitration to seek judicial determination of legal
21 issues that the parties cannot agree upon.



1 SECTION 2. Section 466K-6, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "[+]§466K-6[+] Appraisers in arbitration proceedings. In
4 an arbitration proceeding to determine the fair market value,
5 fair market rental, or fair and reasonable rent of real property
6 where the arbitrator is a real estate appraiser licensed or
7 certified under this chapter [466K, the], the following shall
8 apply:

9 (1) If the parties to the arbitration fail to reach
10 agreement on any legal issue necessary to the
11 determination of the fair market value, fair market
12 rental, or fair and reasonable rent of real property
13 that is the subject of the arbitration, the issue
14 shall not be determined by the arbitrator, but shall
15 be submitted by the parties for judicial determination
16 pursuant to section 658A-5;

17 (2) The record of an award shall include but not be
18 limited to findings of fact; the [state-licensed]
19 appraiser's rationale for the award; the [state-
20 licensed] appraiser's certification of compliance with
21 the most current Uniform Standards of Professional
22 Appraisal Practice as approved by the director; and



1 information regarding the evidence, including the
2 data, methodologies, and analysis that provided the
3 basis for the award[-]; and

4 (3) A real estate appraiser licensed under this chapter
5 acting as an arbitrator shall ensure that the record
6 of the arbitration award, the arbitration award
7 itself, if separately issued, and any supplementary,
8 dissenting, or explanatory opinions shall not be
9 considered confidential or proprietary in nature and
10 shall be made available in a timely manner upon
11 reasonable request by any person, regardless of
12 whether or not that person is a party to the
13 arbitration."

14 SECTION 3. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 4. This Act shall take effect upon its approval.

17 INTRODUCED BY: _____



JAN 23 2012



H.B. NO. 2360

Report Title:

Arbitration; Real Estate Appraisers

Description:

Arbitration proceedings to determine the fair market value, fair market rental, or fair and reasonable rent of real property where the arbitrator is a real estate appraiser, require: (1) certain information from the proceeding to be released upon request by any person; and (2) the arbitration parties to seek judicial determination of legal issues that the parties cannot agree upon.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

