

SB 154

Measure Title: RELATING TO BROKER PRICE OPINIONS.

Report Title: Real Estate Brokers and Salespersons; Broker Price Option

Description: Permits a licensed real estate broker or real estate sales person to prepare broker price options for use in real estate transactions where an appraisal is not required by law or otherwise.

Companion:

Package: None

Current Referral: CPN

**PRESENTATION OF THE
REAL ESTATE COMMISSION**

**TO THE SENATE COMMITTEE ON
COMMERCE AND CONSUMER PROTECTION**

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

**Wednesday, February 23, 2011
8:30 a.m.**

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

**TO THE HONORABLE ROSALYN H. BAKER, 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 Senate Bill No. 154, Relating to Broker Price Opinions and opposes this measure as proposed, but supports it in concept.

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 ("BPO"), 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. However, pursuant to Chapter 114, Hawaii Administrative Rules ("HAR"), relating to Real Estate Appraisers, real estate licensees may provide an opinion as to the recommended listing price of real estate, but may NOT be compensated.

Section 16-114-74(2), HAR, states specifically that, "[t]his chapter **shall not apply to a real estate broker or salesperson** licensed by this State pursuant to Chapter 467, HRS, who, in the ordinary course of the real estate broker's or salesperson's business, gives an opinion as to the recommended listing price of real estate or an opinion to a potential purchaser or third party as to the recommended purchase price of real estate, provided **[n]o compensation, fee, or other consideration is charged** for such opinion other than the normal brokerage fee rendered in connection with the sale of the property."

The Commission's objections are as follows:

- Proposed legislation providing exemptions from any statute should be placed in a relevant, appropriate statute.
- Why regulate an activity where there has never been any complaints filed with the Regulated Industries Complaints Office and do not involve the general public? Who is looking for the protection of the Commission, the lending institutions and other real estate industry professionals? If yes, this would contradict the purpose of the Commission.
- This measure does not fit within the statutorily defined purpose of the Commission. As stated in section 467-4, HRS, the Commission's purpose "is the protection of the general public in its real estate transactions." The passage of this measure would create confusion, and a potential conflict, in the Commission's purpose regarding whether the definition of the

general public also encompasses lenders and other various real estate related industry professionals who use BPOs. Further confusing the Commission's purpose, is whether these BPOs are considered real estate transactions.

- BPOs are not real estate transactions warranting protection of the Real Estate Recovery Fund. According to section 467-16, HRS, the Commission established and currently maintains the Real Estate Recovery Fund to protect "any person aggrieved by an act, representation, transaction, or conduct of a duly licensed real estate broker, or real estate salesperson, upon the grounds of fraud, misrepresentation, or deceit." However, with the passage of this measure, and if BPOs are considered real estate transactions, these transactions would deplete the Real Estate Recovery Fund by persons the fund was not intended to protect, namely the lenders and other various real estate industry professionals.
- Under section 16-201-66, HAR, the proponents of this measure should petition for rule relief. According to this rule, any interested party may petition for the amendment, adoption, or repeal of a rule. The simple solution for the proponents of this measure would be to delete section 16-114-74(2), HAR, which would thereby allow real estate brokers or salespersons to be compensated for providing BPOs.

- This bill proposes to create a new section to regulate the currently unregulated profession of selling BPOs in the real estate brokers and salespersons licensing statute. As stated above, Chapter 16-114-74, HAR, real estate brokers and salespersons are allowed to provide these opinions as long as no compensation, fee, or other consideration is received. However, with the passage of this measure, a new profession of providing BPOs will be created. Section 26H-6, HRS, requires that "all new regulatory measures being considered for enactment that, if enacted, would subject **unregulated professions and vocations to licensing or other regulatory controls** shall be referred to the legislative auditor for analysis." The Auditor provides an objective opinion, commonly known as a "sunrise" review, on both new or expanded regulations, when the scope of profession is modified or expanded and on whether this regulatory scheme is warranted or not. The analysis will 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.
- If this legislation passes, a delayed implementation date is requested. In addition to its many duties, the Commission also sets the curriculum for prelicense schools, contracts for the administration of the examinations, contracts for the development of instructors, determines the content for its

mandatory core course, and approves relevant continuing education courses. Staff will need time to not only become educated with this new regulation, but also provide services related to it.

Therefore, for the above-stated reasons, although the Commission supports the concept, the Commission strongly opposes passage of Senate Bill No. 154 as currently proposed. Thank you for the opportunity to testify.



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February 23, 2011

The Honorable Rosalyn H. Baker, Chair
Senate Committee on Commerce and Consumer Protection
State Capitol, Room 229
Honolulu, Hawaii 96813

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

HEARING: Wednesday, February 23, 2011 at 8:30 a.m.

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

I am Myoung Oh, Government Affairs Director of the Hawaii Association of REALTORS® (“HAR”), the voice of real estate in Hawaii, and its 8,500 members. HAR **strongly supports** S.B. 154 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 and to assist the seller in determining a listing price.

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.

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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.

Accordingly, this bill seeks to clarify that BPOs may be provided by real estate brokers or salespersons for compensation, provided that certain requirements are met. These requirements include that a specific disclosure statement is provided which states that a BPO is not an appraisal. In addition, a real estate broker or salesperson would be prohibited from knowingly preparing a BPO for use as an appraisal, where an appraisal is required by law.

HAR has been working with the Hawaii Chapter of the Appraisal Institute, and is generally agreeable to including their additional proposed disclosures and reporting requirements, with a few clarifications.

We believe the attached language addresses appropriate disclosure and reporting requirements proposed by the Appraisal Institute.

For the reasons above, HAR respectfully requests passage of this measure, but asks that the attached amendments be considered.

Mahalo for the opportunity to testify.



A BILL FOR AN ACT

RELATING TO BROKER PRICE OPINIONS.

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

SECTION 1. Chapter 467, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§467- **Broker price opinions.** (a) A real estate broker or real estate salesperson licensed pursuant to this chapter may prepare a broker price opinion that meets the requirements of this section relating to the estimated price of a specific parcel of real estate and information of varying levels of detail about the property's condition and relevant market factors including the property's location, neighborhood, and recent comparable sales for use by:

(1) An existing or potential seller for the purposes of listing and selling real estate;

(2) An existing or potential buyer of real estate;

(3) A third party for purposes of determining the estimated potential listing, offering, sale, exchange, option, lease, or acquisition price of real estate; or

(4) An existing or potential lienholder; provided that a broker price opinion shall not be substituted for an appraisal by a licensed or certified appraiser if an appraisal is required by applicable law.

(b) If a broker price opinion is provided for compensation or valuable consideration by a real estate broker or real estate salesperson licensed pursuant to this chapter, it shall be in writing and include:

(1) A statement of the intended purpose of the price opinion;

(2) A brief description of the subject property and the property interest to be priced;

(3) The basis of reasoning used to reach the conclusion of the price, including the applicable market data and/or capitalization computation;

(4) Any assumptions or limiting conditions used to determine the price opinion;

(5) A disclosure of any existing or contemplated interest of the broker or sales person issuing the opinion;

(16) The licensee's name, signature, and license identification number;

(27) The date of issuance of the broker price opinion; and

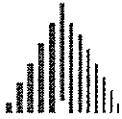
(38) The following disclosure statement:

"Notwithstanding any language to the contrary contained in this document or elsewhere, this broker price opinion is not an appraisal. If you want an appraisal, or if an appraisal is required by law, you must obtain the services of a real estate appraiser licensed or certified pursuant to chapter 466K, Hawaii Revised Statutes."

(c) A real estate broker or real estate salesperson licensed pursuant to this chapter shall not knowingly prepare a broker price opinion for use as an appraisal where an appraisal is required by law or otherwise."

SECTION 2. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2011.



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February 22, 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
Wednesday, February 23, 2011

Testimony Conditionally in Support of SB 154, 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 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. However, broker price opinions can be easily misinterpreted by the public as a real estate appraisal; therefore there is potential for harm since broker price opinions deal with real estate and its correspondingly high dollar amounts.

Real estate appraisers and appraisals are regulated by both the Federal and State laws whereas broker price opinions are not. In order to ensure the safety of users of broker price opinions, we are proposing additional conditions for basic information, disclosures, and reporting requirements.

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

SECTION 1. Chapter 467, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§467- Broker price opinions. (a) A real estate broker or real estate salesperson licensed pursuant to this chapter may prepare a broker price opinion that meets the requirements of this section relating to the estimated price of a specific parcel of real estate and information of varying levels of detail about the property's condition and relevant market factors including the property's location, neighborhood, and recent comparable sales for use by:

- (1) An existing or potential seller for the purposes of listing and selling real estate;
- (2) An existing or potential buyer of real estate;
- (3) A third party for purposes of determining the estimated potential listing, offering, sale, exchange, option, lease, or acquisition price of real estate; or
- (4) An existing or potential lienholder; provided that a broker price opinion shall not be substituted for an appraisal by a licensed or certified appraiser if an appraisal is required by applicable law.

(b) If a broker price opinion is provided for compensation or valuable consideration by a real estate broker or real estate salesperson licensed pursuant to this chapter, it ~~shall~~ must include:

- (1) A statement of the intended purpose of the price opinion;
- (2) A brief description of the subject property and the property interest to be priced;
- (3) The basis of reasoning used to reach the conclusion of the price, including the applicable market data and/or capitalization computation;
- (4) Any assumptions or limiting conditions used to determine the price opinion;
- (5) A disclosure of any existing or contemplated interest of the broker or sales person issuing the opinion;
- (6) The licensee's name, signature, and license identification number;
- (7) The date of issuance of the broker price opinion; and
- (8) The following disclosure statement:

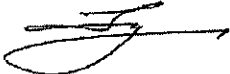
"Notwithstanding any language to the contrary contained in this document or elsewhere, this broker price opinion is not an appraisal. If you want an appraisal, or if an appraisal is required by law, you must obtain the services of a real estate appraiser licensed or certified pursuant to chapter 466K, Hawaii Revised Statutes."

(c) A real estate broker or real estate salesperson licensed pursuant to this chapter shall not knowingly prepare a broker price opinion for use as an appraisal where an appraisal is required by law or otherwise.

(d) Written report: standards and guidelines. A broker's price opinion prepared under the authority granted in this section shall be in writing and the Hawaii Real Estate Commission shall adopt rules, standards and guidelines for providers of broker price opinions.

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 amendments to the Bill, and urge the passage of an amended SB 154. Thank you for this opportunity to testify.

A handwritten signature in black ink, appearing to read 'Ted Yamamura', with a long horizontal stroke extending to the right.

Ted Yamamura
Government Relations Chair



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Presentation to the Senate Committee on Commerce & Consumer Protection

Wednesday, February 23, 2011, at 8:30 a.m.

Testimony on Senate Bill 154 Relating to Brokers Price Opinions

TO: The Honorable Rosalyn H. Baker, Chair
The Honorable Brian T. Taniguchi, Vice Chair
Members of the Senate Committee on Commerce & Consumer Protection

My name is Gary Fujitani, Executive Director of the Hawaii Bankers Association (HBA), testifying in support of the intent of this bill, which permits a licensed real estate broker or real estate sales person to prepare broker price opinions (BPO) for use in real estate transactions where an appraisal is not required by law or otherwise.

It is our understanding that the Hawaii Chapter of the Appraisal Institute has submitted testimony proposing amendments intended to clarify the appropriate use of broker price opinions and proposing additional conditions for basic information, disclosures, and reporting requirements.

BPO provide a valuable service to banks when an appraisal is not required, but, a quick determination of the value of a property is necessary. Codifying the preparation of BPO with the proposed amendments by the Hawaii Chapter of the Appraisal Institute should help in ensuring that users understand the appropriate uses and limitations of BPO.

We thank you for allow us to testify and for your consideration of this matter.

A handwritten signature in black ink, appearing to read 'Gary Y. Fujitani', with a horizontal line drawn through the end of the signature.

Gary Y. Fujitani
Executive Director

HAWAII FINANCIAL SERVICES ASSOCIATION

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February 23, 2011

Sen. Rosalyn H. Baker, Chair,
and members of the Senate Committee on Commerce and Consumer Protection
Hawaii State Capitol
Honolulu, Hawaii 96813

Re: **Senate Bill 154 (Broker Price Opinions)**
Hearing Date/Time: Wednesday, February 23, 2011, 8:30 A.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.

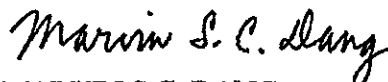
The HFSA supports the intent of this Bill.

The purpose of this Bill is to permit a licensed real estate broker or real estate salesperson to prepare broker price opinions ("BPOs") for use in real estate transactions where an appraisal is not required by law or otherwise.

Mortgage lenders use BPOs in situations where appraisals are not required by law. An appraisal, and not a BPO, is used at the "front end" of a mortgage loan when the loan is originated or made.

However, BPOs are an important tool for mortgage lenders at the "back end" when loans are in default or when loss mitigation is needed. Appraisals are not required, and BPOs are used when mortgage lenders need consider whether to approve a short sale proposal of a borrower; when lenders need to determine whether to approve the terms of a loan modification; when lenders need to decide how much to bid at a foreclosure auction; and when lenders need to resell a real estate owned ("REO") property that was acquired at a foreclosure sale.

Thank you for considering our testimony.



MARVIN S.C. DANG

Attorney for Hawaii Financial Services Association

(MSCD/hfsa)



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February 23, 2011

The Honorable Rosalyn H. Baker, Chair
The Honorable Brian T. Taniguchi, Vice Chair
Committee on Commerce and Consumer Protection
State Capitol Room 229
RE: SB154 Relating to Broker Price Opinions
Hearing: Wednesday, February 23, 2011 at 8:30 AM

I oppose the passage of SB 154.

Current Hawaii Revised Statutes and administrative rules governing real-estate appraisals and brokers price opinions (BPO) provide adequate protection for the general public. Also, regulatory improvements in the mortgage process recently initiated by federal agencies provide additional safeguards in the public interest:

- This special-interest legislation proposed neither demonstrates nor implies an improvement or service to public interest. Protections for the general public already exists in real estate appraiser Uniform Standards of Professional Appraisal Practice, HAR 16-114, HRS 436B, HRS 466K and the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010
- Real estate appraisers are regulated under Federal law in the development, preparation and delivery of value opinions. Real estate appraisers' specific education and training is geared to valuation. Neither the regulation nor the training applies to real estate brokers and sales persons. They are untrained and unregulated in their role as providers of opinions of value.

Leighanne Medeiros
CRA-736

Testimony for CPN 2/23/2011 8:30:00 AM SB154

Conference room: 229

Testifier position: support

Testifier will be present: No

Submitted by: Uvette Sakamoto

Organization: Individual

Address:

Phone:

E-mail: ujsbus@aol.com

Submitted on: 2/16/2011

Comments:

I support S.B. NO.154, relating to Broker Price Opinions. Providing the specified requirements are met as stated in S.B. NO.154. It should be an option on an existing or potential seller for the purpose of listing/selling, offering, sale, exchange, option, lease or acquisition of real estate, by a licensed Real Estate Broker or Salesperson. This option should also be made available to lien holders, however should not be a substitute of an appraisal, if required. Brokers price opinion should be clearly stated that it is not a substitute for an appraisal, this would support all parties involved, for a cost effective and efficient transaction. If an appraisal were to be required for every transaction, it would accumulate excessive expense. In the best interest of the Real Estate Industry and individual's, these type of expenses should be avoided and kept to a minimal.