

**SB 2184**

February 17, 2012

**The Honorable Clayton Hee, Chair**  
Senate Committee on Judiciary and Labor  
State Capitol, Room 016  
Honolulu, Hawaii 96813

**RE: S.B. 2184, Relating to Private Transfer Fees**

**HEARING: Friday, February 17, 2012, at 10:00 a.m.**

Aloha Chair Hee, Vice Chair Shimabukuro, and Members of the Committee:

I am Myoung Oh, Government Affairs Director, here to testify on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its 8,500 members. HAR **strongly supports** S.B. 2184, which repeals the sunset date of Act 129, Session Laws of Hawai'i 2010 and makes permanent the prohibition of private fees for a future transfer of real property.

A Private Transfer Fee ("PTF") is a fee imposed by a private party which requires the payment of a certain amount (usually a percentage of the sales price) for future conveyances of a property, potentially in perpetuity. PTFs may be imposed via deed restrictions or covenants. Sometimes, PTFs may be imposed as part of a new housing development upon the initial and subsequent purchasers of the property. These restrictions run with the land, and may not necessarily be disclosed to subsequent buyers until the closing of a property sale.

HAR believes that, left unregulated, PTFs can be misused, and may create significant financial barriers to homeownership. Because PTFs are funds due at closing, they can be a substantial burden on real property buyers, who are already financially committed to the costs of down payments, appraisals, title insurance, surveys, recording costs, mortgage points, attorney's fees, and other taxes and fees.

In 2010, recognizing the concerns over PTFs, the Legislature passed Act 129, Session Laws of Hawai'i 2010, which prohibits the use of PTFs with very limited exceptions. In that same year, 12 other states passed legislation prohibiting PTFs. As of October 2011, a total of 33 states have either banned or placed conditions on the practice.

Act 129 included a sunset date, and HAR believes that this sunset date should now be removed.

HAR notes that the Federal Housing Finance Agency (“FHFA”) has announced a plan to publish new federal regulation on PTF. The newly proposed rule would limit Fannie Mae, Freddie Mac and the Federal Home Loan Banks from dealing in mortgages that have PTF covenants attached to the properties. There are exceptions in the regulation for PTF paid to homeowner associations, condominiums, cooperatives and certain tax-exempt organizations that use PTF proceeds to benefit the property.

HAR strongly supports prohibiting PTFs because they decrease housing affordability and provide no benefit to property purchasers.

Therefore, we respectfully request your favorable support of this measure to repeal the sunset date of Act 129, Session Laws of Hawai'i 2010 and make permanent the prohibition of private fees.

Mahalo for the opportunity to testify.