

CITIZENS FOR FAIR VALUATION

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February 8, 2012

COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Senator Rosalyn H. Baker, Chair
Senator Brian t. Taniguchi, Vice Chair
Members of the Committee

Hearing: Friday, February 10, 2012, 9:00 am, Conference Room 229

RE: **SB 2938 – Relating to Real Estate Appraisers**
TESTIMONY in SUPPORT

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 2938 which again seeks to bring transparency to rent arbitrations of commercial and industrial properties in the State of Hawaii.

In 2011 the Hawaii State Legislature enacted Act 227, which requires in an "arbitration proceeding 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 licensed under chapter 466K, the record of an award shall include but not be limited to findings of fact; the state-licensed appraiser's rationale for the award; the state-licensed appraiser's certification of compliance with the most current Uniform Standards of Professional Appraisal Practice as approved by the director; and information regarding the evidence, including the data, methodologies, and analysis that provided the basis for the award."

The Governor allowed SB 975 (Act 227) into law after this Committee and both Houses agreed that Act 227 was needed to protect consumers by bringing transparency, through compliance with USPAP and a reasoned report, to arbitrations regarding long-term ground lease rent resets conducted by appraisers. Act 227 was intended to provide valuable information to all interested parties as to "how and why" the panel of appraisers determined valuation. This, in turn, would allow consumers to make better, more informed decisions regarding leasehold rent negotiations.

Unfortunately, the goal of transparency is being undermined through confidentiality agreements between the parties. These agreements are harmful to consumers and serve to negate the positive effects of Act 227. Please do not allow confidentiality clauses to restrict the value of enacted legislation.

In addition, the Courts have placed a great burden on real estate appraisers when they are serving as arbitrators in setting lease rents in that the appraisers are tasked with determining the construction of terms within the lease contracts - a task perhaps best left to lawyers and the court. However, HRS 658A-5 allows the parties in an arbitration to seek judicial relief if there is a disagreement over legal issues. In this instance the legal interpretations of various terms and clauses in the contract. SB2938 seeks to clarify that

Citizens for Fair Valuation

Testimony in Support of SB 2938 – Relating to Real Estate Appraisers

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the state licensed or qualified appraiser will expect the parties to the arbitration to clarify or resolve their differences prior to submitting the matter to them for arbitration. This is an important improvement for the parties in that the contract terms or clauses that are in dispute will be resolved by an individual who is trained and experienced in matters of law.

Please support and pass this bill.

Mahalo

Michael Steiner

Michael Steiner

Executive Director

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LATE

Testimony for CPN 2/10/2012 9:00:00 AM SB2938

Conference room: 229
Testifier position: Oppose
Testifier will be present: No
Submitted by: Raymond Kirchner SRA
Organization: Individual
E-mail: rj@pahawaii.com
Submitted on: 2/9/2012

Comments:

This bill's main error is in making the appraiser the point of transparency. Transparency would be good for the market; however, this bill is going about it the wrong way. The legislature could simply require that all terms of long term leases and any new rents set for those leases have to be recorded documents made public. This would allow the public access to all land lease information, including the lease information which is agreed upon without arbitration or conflict.

The appraisers are not the culprit here. A system which allows transactions to be kept out of the public domain weakens the market and weakens the appraiser's ability to properly measure that market.

Finally, appraisers who have already provided valuation services for a lease rent re-opening for either the lessor or lessee should not be allowed to then sit as arbitrators in determining the final rent. They have a pre determined conclusion and cannot be unbiased. They are witnesses but should not be judges too.

R. J. Kirchner SRA, CGA 275