

February 11, 2013

**The Honorable Angus L.K. McKelvey, Chair**  
House Committee on Consumer Protection & Commerce

**The Honorable Karl Rhoads, Chair**  
House Committee on Judiciary  
State Capitol, Room 325  
Honolulu, Hawaii 96813

**RE: H.B. 998, Relating to Private Transfer Fee**

**HEARING: Monday, February 11, 2013 at 2:30 p.m.**

Aloha Chair McKelvey, Chair Rhoads, and Members of the Joint 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 8,000 members. HAR **strongly supports** H.B. 998, 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, mortgage points, attorney's fees, and other taxes and fees.

In 2010, recognizing the problematic nature of 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. After the 2011 legislation sessions, a total of 36 states have either banned or placed conditions on the practice.

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

Finally, HAR notes that the Federal Housing Finance Agency's (FHFA) final rule excludes private transfer fees paid to homeowner associations, condominiums, cooperatives, and certain tax-exempt organizations that use private transfer fee proceeds to benefit the property. These exclusions are similar to Hawaii's Act.

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.