

**Appraisal
Institute™**

*Professionals Providing
Real Estate Solutions*

Hawaii Chapter

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March 30, 2013

Representative Sylvia Luke, Chair
Representative Scott Yn. Nishimoto, Vice Chair
Committee on Finance

Ted Yamamura, Government Relations Chair
The Hawaii Chapter of the Appraisal Institute
(808) 270-0604
Monday, April 1, 2013
Conference Room 325, 2:00 PM

Testimony Against SB 1258, SD1 HD1 - Relating to Real Estate Appraisers

The Hawaii Chapter of the Appraisal Institute is part of an international organization of professional real estate appraisers with nearly 23,000 members in almost 60 countries 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 speak against SB 1258, SD1 HD1 - Relating to Real Estate Appraisers, which proposes to amend Chapter 466K, Hawaii Revised Statutes.

- a. The Bill incorrectly asserts that there is lack of openness and transparency provided by Act 227 which the legislature passed in 2011. The parties and their counsel involved in arbitration proceedings are consistently afforded the opportunity to participate in the proceedings and there is continuous contact, openness and transparency with all parties and their counsel during the arbitration. Furthermore, there is already judicial relief in an arbitration proceeding under §658A-5, HRS, if a party has cause.
- b. In compliance with Act 227, appraisers acting as arbitrators certify compliance with the Uniform Standards of Professional Appraisal Practice ("USPAP") in addition to fully reporting the basis of the award in Record of Award and Award documents.
- c. The lessor and lessee are free to select ANY appraiser to act as their arbitrator. Contrary to language in the Bill, there are ample state-licensed appraisers in the State of Hawaii who have the knowledge and experience to determine market value or market rents of leasehold properties in Hawaii. It is the **PARTIES** to the arbitration or their counsel that select appraisers-arbitrators, and it is totally incorrect to suggest that there are "relatively few commercial appraisers" in Hawaii.

- d. Regarding recordation of an arbitration award at the Bureau of Conveyance, although we believe it is improper to include a public recordation requirement of a private proceeding, the lessor and/or lessee should record these documents with the Bureau of Conveyances if so desired – it should not be a function of the arbitration panel. Furthermore, this Bill would likely increase the workload and overwhelm the Bureau of Conveyances in recording arbitration documents. Regardless of who is responsible, the added cost associated by recordation will be borne by the Lessor and Lessee. At \$30 per page, the added cost to record 100 pages of documents would be \$3,000.
- e. The cost of arbitrations has been steadily increasing due to more and more legislation imposed upon the arbitration process. It is totally prejudicial, unfair and without merit to fault appraisers-arbitrators for the increased costs of arbitrations. Fees for attorneys, expert witnesses, court reporters commonly exceed arbitrator fees.
- f. Regarding confidentiality, the arbitration proceeding is a quasi-judicial process and has subpoena powers. In many situations, the Arbitration Panel will consider confidential information in the final award of fair market rent; however, the information contained in confidential documents will be identified by reference only and the sanctity of the confidential information will be preserved by the Arbitration Panel. It is the lessor's and lessee's confidential information that are being protected by the Arbitration Panel rather than the Arbitration panel hindering transparency.
- g. We do not recommend any legislation that usurps the validity and intent of USPAP by passing a law that provides for a jurisdictional exception. Even our federal government rarely invokes the jurisdiction exception in complying with USPAP. Congress created the Appraisal Foundation and USPAP with the intent of promoting professionalism and ensuring public trust in the valuation profession. USPAP is intended to protect the welfare of the general public – not a specific group of people.

Finally, the very nature of our profession is built upon public trust. The amendment proposed in SB 1258, SD1 directly works to undermine the process and procedures currently in place during arbitration proceedings, and is also contrary to the intent of USPAP, the Appraisal Foundation, and federal law (Gramm-Leach-Bliley).

We submit that this bill is unnecessary and urge the Committee to deny the passage of SB 1258, SD1 HD1. Thank you for this opportunity to submit testimony.



Ted Yamamura
Government Relations Chair



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March 29, 2013

COMMITTEE ON FINANCE

Rep. Sylvia Luke, Chair

Rep. Scott Y. Nishimoto, Vice Chair

RE: Testimony in Support of SB 1258, SD1, HD1 – Relating to Real Estate Appraisals

Hearing: Monday, April 1, 2013, 2:00 pm; Room 308
State Capitol, 415 South Beretania Street

Aloha Chair Luke, Vice-Chairs Nishimoto and Johanson, and Members of the Committee,

My name is Rodney Kim and we are writing in strong support of SB 1258, SD1, HD1 which would require real estate appraisers acting as arbitrators in ground rent arbitrations to fully disclose and record the arbitration awards, along with the record of the award and any opinions related to the arbitration award with the Bureau of Conveyances.

True markets thrive on competition and information is the key that enables the market to find its equilibrium. As a long-term ground lessee, we are liable for the entire lease and unable to walk away even if the lessor's periodic rent increase is unacceptable. Our only option is to go through a long and very expensive arbitration. The lessor has been through many of these, we have not. Without data from other arbitrations, how can we make an informed decision that will affect our business, our employees, and ultimately you – the consumer of our goods and services? We simply cannot.

By recording arbitration awards at the Bureau of Conveyances, we will at least have the ability to read the data upon which long-term ground lease arbitration awards have been based. We will have the opportunity to decide whether to take the current offer or seek arbitration from a panel of appraisers.

The 2011 Legislature passed Act 227 to bring this data to the public. Unfortunately, the appraisal community has sought to restrict this information through confidentiality agreements.

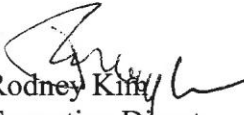
With regard to SB 1258, SD1, HD1, opposition testimony went so far as to incorrectly state the release of data to be unethical. The Department of Commerce & Consumer Affairs has since rescinded its opposition and the appraisal community is silent. The only opposition comes from the Land Use Research Foundation of Hawaii (LURF) – an organization which represents some of the largest land owners and developers in the State. Is it possible they fear a more open and transparent market?

Real estate transactions are routinely recorded at the Bureau of Conveyances. Recordation of the arbitration data will allow interested consumers to obtain information and gain a better understanding of the market. The State will receive additional revenue and the public will be better informed.

I urge you to pass SB 1258, SD1, HD1 and bring light to a market that is controlled by a few individuals.

If you have any questions, please call me.

Very truly yours,


Rodney King
Executive Director

CITIZENS FOR FAIR VALUATION

841 Bishop Street, Suite 1500
Honolulu, HI 96813

ROBERT M. CREPS, PRESIDENT
CULLY JUDD, VICE PRESIDENT
CONNIE SMALES, SECRETARY

PHILLIP J. SILICH, TREASURER
OSWALD STENDER, DIRECTOR
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March 29, 2013

THE TWENTY-SEVENTH LEGISLATURE REGULAR SESSION OF 2013

COMMITTEE ON FINANCE
Rep. Sylvia Luke, Chair
Rep. Scott Y. Nishimoto, Vice Chair
Rep. Aaron Ling Johanson, Vice Chair

Testimony in Support of SB 1258, SD1, HD1 – Relating to Real Estate Appraisals

Hearing: Monday, April 1, 2013, 2:00 pm; Room 308
State Capitol, 415 South Beretania Street

Aloha Chair Luke, Vice-Chairs Nishimoto and Johanson, and Members of the Committees,

My name is Michael Steiner and I am the Executive Director of Citizens for Fair Valuation (CFV), a non-profit coalition of long-term ground lessees. I support passage of SB 1258, SD1, HD1 which would require real estate appraisers, when acting as arbitrators, to record all arbitration awards, the records of the awards and any supplementary, dissenting, or explanatory opinions with the bureau of conveyances within ninety days of the determination of the arbitration award and the notification of its determination to the parties.

Act 227 (Session Laws of Hawaii 2011) requires appraisers in arbitration proceedings to certify compliance with the Uniform Standards of Professional Appraisal Practice (USPAP). Act 227 further requires appraisers to provide relevant data related to the findings of fact and methodologies employed to support their conclusions, within the record of the award.

Since the passage of Act 227 the appraisal community has stymied legislative intent by requiring confidentiality agreements among the parties to the arbitration. SB 1258, SDI, HD1 seeks to further implement the 2011 legislative intent for transparency and openness by requiring data be recorded at the Bureau of Conveyance.

Long-Term Ground Leases:

The majority of commercial and industrial businesses throughout the State of Hawaii lease their properties under long-term ground leases. Throughout the 50 years of the long-term lease, the lease will require the lessor and lessee to reset rental rates usually every 10 years. If the parties are unable to negotiate a "fair" rental rate, the lease contract requires the parties to engage three licensed real estate appraisers to set a final and binding valuation.

In Hawaii, the overwhelming majority of commercial and industrial land is held by just a small number of large landowners. From a very small pool of licensed commercial/industrial appraisers, these landowners

routinely employ appraisers on an ongoing, year-after-year basis as their properties are continually appraised for valuation reporting, financing and lease rates.

In contrast, the thousands of smaller companies that lease and “work” the land very rarely engage an appraiser. With the exception of perhaps a new lease or bank required financed-based valuation, lessees do not generally require appraisal service. This, of course, creates the potential for appraisal abuse.

Unfortunately, it seems the number of lease related appraisal/arbitrations is skyrocketing as landowners demand rents that lessees feel, in this economy, are well above and beyond the “fair market” value. The small pool of licensed real estate appraisers are being engaged at an unprecedented rate where they, in effect, sit as judge and jury to create “market” rents. As more and more arbitrations take place, the need to bring uniformity and transparency is greater than ever before.

Act 227 was enacted to bring righteousness back to the arbitration process by requiring the parties to adhere to the highest ethical and professional standards as found in the Uniform Standards of Professional Appraisal Practices (USPAP). SB 1258, SD1, HD1 seeks to complete that process by requiring transparency through recordation of the records of the arbitration awards with the Bureau of Conveyance.

Rebuttal of Opposition Testimony:

Opposition testimony submitted from the Appraisal Institute, Hawaii Chapter, as well as the Professional and Vocational Licensing Division of the Department of Commerce and Consumer Affairs, and the Land Use Research Foundation sought to restrict disclosure of the award and related data stating it would conflict with the ethical requirements of USPAP. Since that hearing and upon further review and investigation, the Professional and Vocational Licensing Division of the Department of Commerce and Consumer Affairs reported to the Chair of Senate Committee on Commerce and Consumer Protection that it has withdrawn its opposition to SB 1258 as state law or regulation would override any provision within USPAP.

The only remaining opposition to this bill comes from the Land Use Resource Foundation (LURF) whose recent testimony is designed more to obfuscate the issue than bring clarity. For instance:

“SB 1258, SD1 is premature, as it should await the completion of the Legislative Reference Bureau (“LRB”) Report required by SCR90” - SCR 90 seeks to update a 2003 study related to the overall (macro) effect on ground leases on the economy of Hawaii. SCR 90, which currently has no funding, has absolutely nothing to do with the day-to-day issues of long-term ground arbitrations and the immediate market data generated by those proceedings.

“Violates terms of existing lease contracts” - After speaking with numerous local real estate attorneys, none were able to recall a lease that contains a confidentiality clause. As such, the threat of contract clause violations is meant solely to distract from the intent of the legislature. Indeed, LURF cites contract clause finding *HRPT Properties Trust v. Lingle*, but then adds a disclaimer of the testimony being “inapplicable to the bill.” It should be noted that the large lessors have most of the data in question as they do numerous arbitrations. It is only the lessee who disadvantaged without access to information.

“There is no factual justification for SB 1258, SD1” – LURF cites a 2003 LRB report which states there is no need for “legislation altering existing lease agreements.” The data quoted from this 10 year old

report is taken out of context and does not apply to the current hearing. SB 1258 does not seek to alter existing leases but merely looks for arbitration awards and related data to be made available to the public through the Bureau of Conveyance.

“Bill violates the spirit and intent of the USPAP Ethics rule relation to confidentiality” – While USPAP does speak to confidentiality at length, it is once again pointed out that Section 4(d) of the Ethics Rule clearly states the ethics rule is overridden “as may be authorized by due process of law.” Section 4(e) adds that confidentiality is required “except when such disclosure . . . would violate applicable law or regulation.” Furthermore, opposition testimony failed to recognize USPAP’s Rule of Jurisdictional Exception which is defined as:

An assignment condition established by applicable law or regulation which precludes and appraiser from complying with a part of USPAP.

In other words, the Jurisdictional Exception "provides a saving or severability clause intended to preserve the balance of USPAP if compliance with one or more of its parts is precluded by the law or regulation of a jurisdiction. When an appraiser properly follows this Rule in disregarding a part of USPAP, there is no violation of USPAP." Baker. Stand. Com. Rep. No 551 of 2013).

Intent of USPAP Supports SB 1258, SD1, HD1:

In reading the USPAP’s Preamble, it is clear the purpose of USPAP is to “promote and maintain a high level of public trust in appraisal practice.” The Preamble adds, “The appraiser’s responsibility is to protect the overall public trust. . .” As SB 1258 puts information into the public domain, it specifically accomplishes the overriding purpose of appraisers which is to promote public trust. The text of the preamble is as follows:

PREAMBLE

The purpose of the *Uniform Standards of Professional Appraisal Practice* (USPAP) is to promote and maintain a high level of public trust in appraisal practice by establishing requirements for appraisers. It is essential that appraisers develop and communicate their analyses, opinions, and conclusions to intended users of their services in a manner that is meaningful and not misleading.

The Appraisal Standards Board promulgates USPAP for both appraisers and users of appraisal services. The appraiser’s responsibility is to protect the overall public trust and it is the importance of the role of the appraiser that places ethical obligations on those who serve in this capacity. USPAP reflects the current standards of the appraisal profession.

USPAP does not establish who or which assignments must comply. Neither The Appraisal Foundation nor its Appraisal Standards Board is a government entity with the power to make, judge, or enforce law. Compliance with USPAP is required when either the service or the appraiser is obligated to comply by law or regulation, or by agreement with the client or intended users. When not obligated, individuals may still choose to comply.

Captive Lessees:

CFV believes informed decisions are better decisions. Considering most long-term lessees are “captive” to their leases – meaning they are the only ones who can bid on the rent – they are already at a distinct disadvantage. They are contractually obligated to continue the lease and, if they do not agree with a lessor’s “take-it-or-leave-it” offer, costly arbitration is their only option.

Making the data available to the public, will help create a more open and transparent market. The long-term ground lease rent valuation market controls what lessees pay and that in turn is reflected in the cost of goods and services provided to the public. It is time the data that supports this market is made public.

SB 1258 SD1, HD1 Generates State Revenue:

Recordation of the arbitration awards and related data will generate revenue for the State of Hawaii.

Opponents of this bill may argue that SB 1258, SD1 will cause additional expense in rendering and recording the records of awards. Over the past two years, appraisers have consistently raised their fees from roughly \$15,000 per arbitration to what is now close to \$50,000 per arbitration.

The basic cost of recordation at the Bureau of Conveyance is roughly \$30 with a per page charge for larger documents. With arbitrations running into the hundreds of thousands of dollars, the recordation fee will not alter the process

Act 227 (Session Laws of Hawaii 2011):

With very few industrial and commercial appraisers in State, the same few appraisers are being called upon to provide valuation reports, rotate between the roles of experts, presenting testimony to an arbitration panel or sitting as an arbitrator upon a panel. In essence, rather than buyers and sellers coming together at arm's length, our local appraisal community is determining and controlling the "market" with confidentiality as their shield.

With more and more lessors and lessees unable to negotiate fair and reasonable rents, the resulting spike in arbitrations puts a great deal of responsibility in the hands of our commercial/industrial appraisers. Their appraisal and arbitration results create a "market," that is secreted away and unavailable to interested parties. Rather than working against the legislative intent, the appraisal community should welcome the opportunity to provide information for all to benefit.

Act 227 was enacted to bring understanding to the market making process. Its intent was to provide data to the market such that others would be better equipped to make informed judgments as to the value of their properties and the rents being demanded by lessors.

Please pass SB 1258, SD1, HD1 to continue the work started with Act 227.

Mahalo

MICHAEL STEINER

Michael Steiner
Executive Director
Citizens for Fair Valuation

Telephone: (808) 221-5955

Email: MSteiner@SteinerAssoc.com



March 29, 2013

COMMITTEE ON FINANCE

Rep. Sylvia Luke, Chair

Rep. Scott Y. Nishimoto, Vice Chair

Testimony in Support of SB 1258, SD1, HD1 – Relating to Real Estate Appraisals

Hearing: Monday, April 1, 2013, 2:00 pm; Room 308

State Capitol, 415 South Beretania Street

Aloha Chair Luke, Vice-Chairs Nishimoto and Johanson, and Members of the Committees,

My name is Robert Creps and I am writing in strong support of SB 1258, SD1, HD1 which would require real estate appraisers acting as arbitrators in ground rent arbitrations to fully disclose and record the arbitration awards, along with the record of the award and any opinions related to the arbitration award with the Bureau of Conveyance.

True markets thrive on competition and information is the key that enables the market to find its equilibrium. As a long-term ground lessee, I am obligated to pay the ground rent for periods into the future for which the rent has yet to be set. If when presented with an unreasonable reset rent offer, I am not able to give the property back and let the lessor find out what the true market rent is. My only option is to go through a long and very expensive arbitration. The lessor has been through many of these, I have not. Without the data from other arbitrations, I can not make an informed decision about what is a fair rent.

By recording arbitration awards at the Bureau of Conveyance, I will at least have the ability to read the data upon which long-term ground lease arbitration awards have been based. I will have the opportunity to decide whether to take the current offer or seek arbitration from a panel of appraisers.

The 2011 Legislature passed Act 227 to bring this data to the public. Unfortunately, the appraisal community has sought to restrict this information through confidentiality agreements.

Real estate transactions are routinely recorded at the Bureau of Conveyance. Recordation of the arbitration data will allow interested consumers to obtain information and gain a better understanding of the market. The State will receive additional revenue and the public will be better informed.

I urge you to pass SB 1258, SD1, HDI and bring light into a market that is controlled by too few individuals.

Thank you,

Robert M. Creps
Senior Vice President
Grace Pacific Corporation

March 29, 2013

COMMITTEE ON FINANCE

Rep. Sylvia Luke, Chair

Rep. Scott Y. Nishimoto, Vice Chair

Testimony in Support of SB 1258, SD1, HD1 – Relating to Real Estate Appraisals

Hearing: Monday, April 1, 2013, 2:00 pm; Room 308

State Capitol, 415 South Beretania Street

Aloha Chair Luke, Vice-Chairs Nishimoto and Johanson, and Members of the Committees,

My name is Clyde Kojima and I own Mutual Plumbing Supply, a small family business in Mapunapuna. I am writing in strong support of SB 1258, SD1, HD1 which would require real estate appraisers acting as arbitrators in ground rent arbitrations to fully disclose and record the arbitration awards, along with the record of the award and any opinions related to the arbitration award with the Bureau of Conveyance.

True markets thrive on competition and information is the key that enables the market to find its equilibrium. As a long-term ground lessee, I am liable for the entire lease and unable to walk away even if the lessors' periodic rent increase is unacceptable. My only option is to go through a long and very expensive arbitration. The lessor has been through many of these, I have not. Without data from other arbitrations, how can I make an informed decision that will affect my business, its employees, and ultimately you – the consumer of my goods and services? I simply cannot.

By recording arbitration awards at the Bureau of Conveyance, I will at least have the ability to read the data upon which long-term ground lease arbitration awards have been based. I will have the opportunity to decide whether to take the current offer or seek arbitration from a panel of appraisers.

The 2011 Legislature passed Act 227 to bring this data to the public. Unfortunately, the appraisal community has sought to restrict this information through confidentiality agreements.

With regard to SB 1258, SD1, HD1, opposition testimony went so far as to incorrectly state the release of data to be unethical. The DCCA has since rescinded its opposition and the appraiser community is silent. The only opposition comes from LURF – an organization which represents some of the largest land-owners and developers in the State. Is it possible they fear a more open and transparent market?

Real estate transactions are routinely recorded at the Bureau of Conveyance. Recordation of the arbitration data will allow interested consumers to obtain information and gain a better understanding of the market. The State will receive additional revenue and the public will be better informed.

I urge you to pass SB 1258, SD1, HDI and bring light into a market that is controlled by too few individuals.

Mahalo,

Clyde T. Kojima
Mutual Plumbing Supply Co., Inc.
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March 30, 2013

The Twenty-Seventh Legislature, Regular Session of 2013
Committee on Finance
Rep. Sylvia Luke, Chair
Rep. Scott Y. Nishimoto, Vice-Chair
Members of the Committee

VIA EMAIL
CPCtestimony@Capitol.hawaii.gov

Re: Testimony in Support of SB 1258, SD1, HD1– Relating to Real Estate Appraisers
Hearing: April 1, 2013, 2:00 pm; Room 308

Dear Chair Luke, Vice-Chair Nishimoto, and Members of the Committee,

My name is William S. Alexander and my company is a lessee of the Queen Emma Land Company in Central Park, Halawa Valley. I am also the current President of the Central Park Community Association (CPCA), an association of lessees in Central Park. I am writing in strong support of SB 1258, SD1, HD1 which would require real estate appraisers acting as arbitrators in ground lease rent arbitrations to fully disclose and record the arbitration awards, along with the record of the award and any opinions related to the arbitration award with the Bureau of Conveyance.

Fifteen lessees of CPCA, including my company, have been in a long and arduous process to set new ground lease rent in Halawa Valley with Kamehameha Schools/Bishop Estate and Queen Emma Land Company since June of 2009. The leases provided for the new rent to begin on or about January 1, 2010 after an initial thirty year period when specific rent was set by the terms of the leases. The new rent for the Bishop land was settled by consolidated arbitration in January of 2012 but the new rent with Queen Emma is still pending due in part to Act 227. Settling the new rent with Queen Emma has become even more difficult and costly as we have been ordered by District Court to have eleven separate arbitrations versus a single consolidated arbitration as was done with Bishop and which may further delay the process.

With the enactment of Act 227 (Session Laws of Hawaii 2011) the Legislature made it clear that real estate appraisers, when acting as arbitrators in long-term ground lease rent valuations, shall provide relevant data as to findings of fact and methodologies employed to support their conclusions within the record of award. The act was intended to create a more open and transparent market process in which both lessors and lessees would have data from which to

make more informed decisions.

True markets thrive on competition and information is what enables markets to find equilibrium. As a long term ground lessee, my company is liable for the entire lease period and can't walk away even if the Lessor's rent reset demands are onerous and unacceptable. We are forced into the long and expensive arbitration process which the Lessor's understand well but we have little or no experience or knowledge of. We need as much information as possible to attempt to level the playing field between a giant land owner and a small lessee.

Unfortunately appraiser/arbitrators in response to Act 227 are insisting on adding confidentiality clauses to their engagement agreements in order to prevent the disclosure of the award data and methodologies thereby limiting the information available to individuals, corporations, lessors, and lessees when making decisions about new ground lease rent or when deciding to enter into a long term land lease. This action frustrates the intent of Act 227 and severely constrains the development of a true "open" market in the valuation and arbitration process. CPCA and its lessees have been directly affected by this when our consolidated arbitration panel with Queen Emma resigned in November 2012 due to our resistance to their demands for confidentiality and excessive indemnification in their engagement agreement as well as excessive fees, causing further delay and needless additional cost to both lessor and lessee. Because of that panel's withdrawal Queen Emma initiated eleven separate arbitrations and resisted CPCA's motion to consolidate as provided by Hawaii law.

It is my understanding that previous opposition testimony to SB 1258, SD1, HD1 from DCCA and the Appraisal Institute went so far as to incorrectly state that the release of arbitration data was unethical. DCCA has since rescinded its opposition but the appraisal community is silent. Opposition now comes only from LURF which is an organization primarily of large land owners and developers. Why are they concerned about a more open and transparent land lease market? Real estate transactions are routinely recorded. Recordation of arbitration data will allow for a more transparent and open market. The State gets some additional revenue and the public is better informed with the passage of SB 1258, SD1, HD1. Please pass it.

Thank you for your consideration.

Mahalo,

William S. Alexander
President
wsalema@aol.com

JN Group, Inc.

fka WHOLESale MOTORS, INC.

ESTABLISHED IN 1961

2999 N. Nimitz Highway Honolulu, Hawaii 96819-1903

Phone: 808.831.2500 Fax: 808.831.2594 www.jnautomotive.com

JN Automotive Group

JN Chevrolet March 29, 2013

JN Mazda

COMMITTEE ON FINANCE

Rep. Sylvia Luke, Chair

Audi of Hawaii

Rep. Scott Y. Nishimoto, Vice Chair

Testimony in Support of SB 1258, SD1, HD1 – Relating to Real Estate

Ferrari of Hawaii

Appraisals

Hearing: Monday, April 1, 2013, 2:00 pm; Room 308

State Capitol, 415 South Beretania Street

Maserati of Hawaii

Aloha Chair Luke, Vice-Chairs Nishimoto and Johanson, and Members of the Committees,

Lamborghini Hawaii

My name is Joseph P. Nicolai and I am writing in strong support of SB 1258, SD1, HD1 which would require real estate appraisers acting as arbitrators in ground rent arbitrations to fully disclose and record the arbitration awards, along with the record of the award and any opinions related to the arbitration award with the Bureau of Conveyance.

Bentley Honolulu

JN Lotus

True markets thrive on competition and information is the key that enables the market to find its equilibrium. As a long-term ground lessee, I am liable for the entire lease and unable to walk away even if the lessors' periodic rent increase is unacceptable. My only option is to go through a long and very expensive arbitration. The lessor has been through many of these, I have not. Without data from other arbitrations, how can I make an informed decision that will affect my business, its employees, and ultimately you – the consumer of my goods and services? I simply cannot.

JN Car and Truck Rentals

JN Leasing

By recording arbitration awards at the Bureau of Conveyance, I will at least have the ability to read the data upon which long-term ground lease arbitration awards have been based. I will have the opportunity to decide whether to take the current offer or seek arbitration from a panel of appraisers.

JN Advertising

JN Development

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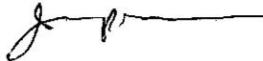
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March 29, 2013
Testimony in Support of SB 1258, SD1, HD1
Page 2

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I urge you to pass SB 1258, SD1, HDI and bring light into a market that is controlled by too few individuals.

Aloha,



Joseph P. Nicolai
JN Group, Inc.
Phone: 808-831-2525

March 29, 2013

COMMITTEE ON FINANCE

Rep. Sylvia Luke, Chair

Rep. Scott Y. Nishimoto, Vice Chair

Testimony in Support of SB 1258, SD1, HD1 – Relating to Real Estate Appraisals

Hearing: Monday, April 1, 2013, 2:00 pm; Room 308

State Capitol, 415 South Beretania Street

Aloha Chair Luke, Vice-Chairs Nishimoto and Johanson, and Members of the Committees,

My name is Myron Nakata and I am writing in strong support of SB 1258, SD1, HD1 which would require real estate appraisers acting as arbitrators in ground rent arbitrations to fully disclose and record the arbitration awards, along with the record of the award and any opinions related to the arbitration award with the Bureau of Conveyance.

I am currently a long-term ground lessee; I am liable for the entire lease and unable to walk away even if the lessors' periodic rent increase is unacceptable. My only option was to go through a long and very expensive arbitration. The lessor has been through many of these, I have not. Without data from other arbitrations, I could not make an informed decision that will affect my livelihood.

By recording arbitration awards at the Bureau of Conveyance, I will at least have the ability to read the data upon which long-term ground lease arbitration awards have been based. I will have the opportunity to decide whether to take the current offer or seek arbitration from a panel of appraisers.

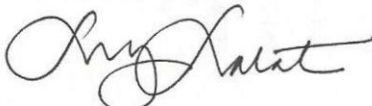
The 2011 Legislature passed Act 227 to bring this data to the public. Unfortunately, the appraisal community has sought to restrict this information through confidentiality agreements.

With regard to SB 1258, SD1, HD1, opposition testimony went so far as to incorrectly state the release of data to be unethical. The DCCA has since rescinded its opposition and the appraiser community is silent. The only opposition comes from LURF – an organization which represents some of the largest land-owners and developers in the State. Is it possible they fear a more open and transparent market?

Real estate transactions are routinely recorded at the Bureau of Conveyance. Recordation of the arbitration data will allow interested consumers like me to obtain information and gain a better understanding of the market. The State may receive additional revenue and the public will be better informed.

I urge you to pass SB 1258, SD1, HDI and bring light into a market that is controlled by too few individuals.

Mahalo,



Myron Nakata

March 29, 2013

VIA FACSIMILE
1-800-535-3859

Honorable Representative Sylvia Luke, Chair
Honorable Representative Scott Y. Nishimoto Vice Chair
Honorable Representative Aaron Ling Johanson, Vice Chair
House Members of Committee on Consumer Protection & Commerce

**RE: TESTIMONY IN SUPPORT OF MEASURE SB1258 SD1 HD1 - RELATING TO
REAL ESTATE APPRAISERS - HEARING SCHEDULED FOR MONDAY,
APRIL 1, 2013, AT 2:00 P.M.,**

Dear Honorable Chair Sylvia Luke, Vice Chair Scott Nishimoto, Vice Chair Aaron Ling
Johanson, and Members of the House Committee on Finance:


PETITION:

I support passage of SB1258 SD1 HD1 which would require real estate appraisers acting as arbitrators in ground rent renegotiation to fully disclose arbitration awards, records of arbitration awards and any opinions related to such arbitration proceedings.

It was the intent of the Legislature in enacting Act 227 that the arbitrators would provide openness and transparency in the reporting of their awards and decisions in arbitration proceedings. However with the enactment of Act 227, the arbitrators have incorporated confidentiality clauses to prevent the disclosure of their awards and decisions to participants in the real estate market from understanding the real estate market in an open and transparent manner. This action frustrates the intent of Act 227. Passage of this bill will improve and protect the interests of the people of Hawaii by making data which affects commercial and industrial lease valuations available to everyone.

We urge your approval of this bill.

Sincerely,



Print Name Aaron Ling Johanson
Address 1431 Hikeke Pl
96816

March 29, 2013

VIA FACSIMILE
1-800-535-3859

Honorable Representative Sylvia Luke, Chair
Honorable Representative Scott Y. Nishimoto Vice Chair
Honorable Representative Aaron Ling Johanson, Vice Chair
House Members of Committee on Consumer Protection & Commerce

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and Members of the House Committee on Finance:

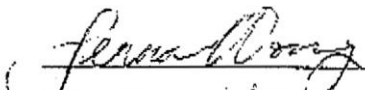
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We urge your approval of this bill.

Sincerely,



Print Name Jenna Wong
Address 1830 Punahoa St Honolulu HI 96822

JAMES W. Y. WONG

HONOLULU OFFICE

3737 Manoa Road
Honolulu Hawaii 96822
Phone: (808) 946-2966
FAX: (808) 943-3140

ANCHORAGE OFFICE

411 West 4th Avenue, Ste 200
Anchorage, Alaska 99501
Phone: (907) 278-3263
FAX: (907) 222-4852

March 29, 2013

VIA FACSIMILE
1-800-535-3859

Honorable Representative Sylvia Luke, Chair
Honorable Representative Scott Y. Nishimoto Vice Chair
Honorable Representative Aaron Ling Johanson, Vice Chair
House Members of Committee on Consumer Protection & Commerce

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TO REAL ESTATE APPRAISERS - HEARING SCHEDULED FOR MONDAY,
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Aaron Ling Johanson, and Members of the House Committee on Finance:

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It was the intent of the Legislature in enacting Act 227 that the arbitrators would provide openness and transparency in the reporting of their awards and decisions in arbitration proceedings. However with the enactment of Act 227, the arbitrators have incorporated confidentiality clauses to prevent the disclosure of their awards and decisions to participants in the real estate market from understanding the real estate market in an open and transparent manner. This action frustrates the intent of Act 227. Passage of this bill will improve and protect the interests of the people of Hawaii by making data which affects commercial and industrial lease valuations available to everyone.

Please approve SB1258 SD1 HD1.

Aloha,



James W. Y. Wong

March 29, 2013

VIA FACSIMILE
1-800-535-3859

Honorable Representative Sylvia Luke, Chair
Honorable Representative Scott Y. Nishimoto Vice Chair
Honorable Representative Aaron Ling Johanson, Vice Chair
House Members of Committee on Consumer Protection & Commerce

**RE: TESTIMONY IN SUPPORT OF MEASURE SB1258 SD1 HD1 - RELATING TO
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We urge your approval of this bill.

Sincerely,



Print Name Gentry Ono

Address 484B HA. Motokana 2587 Dale St
Honolulu, HI 96822

March 29, 2013

VIA FACSIMILE
1-800-535-3859

Honorable Representative Sylvia Luke, Chair
Honorable Representative Scott Y. Nishimoto Vice Chair
Honorable Representative Aaron Ling Johanson, Vice Chair
House Members of Committee on Consumer Protection & Commerce

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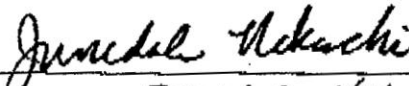
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We urge your approval of this bill.

Sincerely,



Print Name Junedale Nakachi
Address 2385 Okaa St, Honolulu, HI 96821

March 29, 2013

VIA FACSIMILE

1-800-535-3859

Honorable Representative Sylvia Luke, Chair
Honorable Representative Scott Y. Nishimoto Vice Chair
Honorable Representative Aaron Ling Johanson, Vice Chair
House Members of Committee on Consumer Protection & Commerce

**RE: TESTIMONY IN SUPPORT OF MEASURE SB1258 SD1 HD1 - RELATING TO
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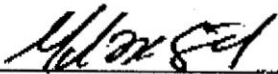
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I support passage of SB1258 SD1 HD1 which would require real estate appraisers acting as
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arbitration awards and any opinions related to such arbitration proceedings.

It was the intent of the Legislature in enacting Act 227 that the arbitrators would provide
openness and transparency in the reporting of their awards and decisions in arbitration
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confidentiality clauses to prevent the disclosure of their awards and decisions to participants in
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manner. This action frustrates the intent of Act 227. Passage of this bill will improve and protect
the interests of the people of Hawaii by making data which affects commercial and industrial
lease valuations available to everyone.

We urge your approval of this bill.

Sincerely,



Print Name Gordon L.K. Smith

Address 2395 Okaa St Hono HI 96821

March 29, 2013

VIA FACSIMILE
1-800-535-3859

Honorable Representative Sylvia Luke, Chair
Honorable Representative Scott Y. Nishimoto Vice Chair
Honorable Representative Aaron Ling Johanson, Vice Chair
House Members of Committee on Consumer Protection & Commerce

**RE: TESTIMONY IN SUPPORT OF MEASURE SB1258 SD1 HD1 - RELATING TO
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We urge your approval of this bill.

Sincerely,

Rosalind Moore
Print Name ROSALIND MOORE
Address 3358 ALHEA AVE HON., HI 96816

March 29, 2013

VIA FACSIMILE
1-800-535-3859

Honorable Representative Sylvia Luke, Chair
Honorable Representative Scott Y. Nishimoto Vice Chair
Honorable Representative Aaron Ling Johanson, Vice Chair
House Members of Committee on Consumer Protection & Commerce

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We urge your approval of this bill.

Sincerely,

Loui Lee

Print Name Loui Lee

Address 906 6th Avenue, Honolulu 96816

March 29, 2013

VIA FACSIMILE
1-800-535-3859

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Honorable Representative Scott Y. Nishimoto Vice Chair
Honorable Representative Aaron Ling Johanson, Vice Chair
House Members of Committee on Consumer Protection & Commerce

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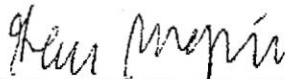
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We urge your approval of this bill.

Sincerely,



Print Name

Cecil Sugita

Address

1044 12th Ave. Honolulu HI 96816

March 29, 2013

VIA FACSIMILE
1-800-535-3859

Honorable Representative Sylvia Luke, Chair
Honorable Representative Scott Y. Nishimoto Vice Chair
Honorable Representative Aaron Ling Johanson, Vice Chair
House Members of Committee on Consumer Protection & Commerce

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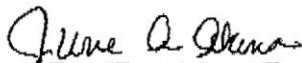
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We urge your approval of this bill.

Sincerely,



Print Name June A. AKINA

Address 46-298 Kahuhiwa St Kaneohe HI 96744

March 29, 2013

VIA FACSIMILE
1-800-535-3859

Honorable Representative Sylvia Luke, Chair
Honorable Representative Scott Y. Nishimoto Vice Chair
Honorable Representative Aaron Ling Johanson, Vice Chair
House Members of Committee on Consumer Protection & Commerce

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We urge your approval of this bill.

Sincerely,



Print Name

Ross Chan

Address

46-507 Hialehwa St, Kaneohe HI 96747

COLIN LAU

47-695 Hui Ulili Street, Kaneohe, HI 96744

March 29, 2013

VIA FACSIMILE
1-800-535-3859

Honorable Representative Sylvia Luke, Chair
Honorable Representative Scott Y. Nishimoto Vice Chair
Honorable Representative Aaron Ling Johanson, Vice Chair
House Members of Committee on Consumer Protection & Commerce

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Johanson, and Members of the House Committee on Finance:

I support passage of SB1258 SD1 HD1 which would require real estate appraisers acting as arbitrators in ground rent renegotiation to fully disclose arbitration awards, records of arbitration awards and any opinions related to such arbitration proceedings.

The majority of Hawaii commercial and industrial businesses are on leasehold properties whose ground rents are subject to periodic rent renegotiation. When the lessor and lessee are unable to reach agreement on the ground rent, their leases require that the rents would be resolved through binding arbitration. The process provides that only qualified real estate appraisers would serve as arbitrators. This results in the appraisers acting as appraiser, lawyer and judge while serving as an arbitrator whose decisions have limited or no grounds for appeal based on errors of either judgment or fact. Act 227 was enacted by the Legislature in 2011 to fully report the appraiser's basis for an award when valuing properties and determining market values or market rents however the appraisers have attempted to circumvent the legislative intent by incorporating confidentiality clauses into many of the arbitration agreements. It was the intent of the Legislature in enacting Act 227 that the arbitrators would provide openness and transparency in the reporting of their awards and decisions in arbitration proceedings. To the contrary, the arbitrators have incorporated confidentiality clauses to prevent the disclosure of their awards and decisions to participants in the real estate market from understanding the real estate market in an open and transparent manner. This action frustrates the intent of Act 227. Passage of this bill will improve and protect the interests of the people of Hawaii by making data which affects commercial and industrial lease valuations available to everyone.

I urge your approval of SB1258 SD1 HD1.

Thank you,


Colin Lau

JN Group, Inc.

fka WHOLESALE MOTORS, INC.

ESTABLISHED IN 1961

2999 N. Nimitz Highway Honolulu, Hawaii 96819-1903

Phone: 808.831.2500 Fax: 808.831.2594 www.jnautomotive.com

JN Automotive Group

JN Chevrolet

March 29, 2013

JN Mazda

VIA FACSIMILE
1-800-535-3859

Audi of Hawaii

Honorable Representative Sylvia Luke, Chair
Honorable Representative Scott Y. Nishimoto Vice Chair
Honorable Representative Aaron Ling Johanson, Vice Chair
House Members of Committee on Consumer Protection & Commerce

Ferrari of Hawaii

Maserati of Hawaii

**RE: TESTIMONY IN SUPPORT OF MEASURE SB1258 SD1 HD1 -
RELATING TO REAL ESTATE APPRAISERS - HEARING
SCHEDULED FOR MONDAY, APRIL 1, 2013, AT 2:00 P.M.**

Lamborghini Hawaii

Dear Honorable Chair Sylvia Luke, Vice Chair Scott Nishimoto, Vice Chair Aaron Ling Johanson, and Members of the House Committee on Finance:

Bentley Honolulu

PETITION:

JN Lotus

I support passage of SB1258 SD1 HD1 which would require real estate appraisers acting as arbitrators in ground rent renegotiation to fully disclose arbitration awards, records of arbitration awards and any opinions related to such arbitration proceedings.

La Collezione Nicolai

JN Car and Truck Rentals

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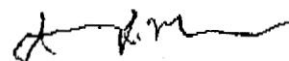
JN Leasing

JN Advertising

JN Development

We urge your approval of this bill.

Sincerely,



Joseph P. Nicolai