



March 8, 2013

**THE TWENTY-SEVENTH LEGISLATURE  
REGULAR SESSION OF 2013  
COMMITTEE ON CONSUMER PROTECTION & COMMERCE  
Rep. Angus L.K. McKelvey, Chair  
Rep. Derek S.K. Kawakami, Vice Chair**

**Testimony in Support of SB 1258, SD1 – Relating to Real Estate Appraisals**  
**Hearing: March 11, 2013, 2:00 pm; Room 325**

Aloha Chair McKelvey, Vice-Chair Kawakami and Members of the Committees,

My name is Robert Creps and I am writing in strong support of SB 1258, SD1, 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.

Businesses need information to make informed decisions. It is time the appraisers release the data which creates the market for long-term lease rents. Without data, it is impossible to make the hard decisions that affect the bottom-line of my business and my ability to maintain operations.

The 2011 Legislature passed Act 227 to bring this data to the public. However, the appraisal community continues to frustrate the legislature's intent by forcing confidentiality agreements upon arbitration participants in order to keep the data locked away from the public scrutiny. Opposition testimony went so far as to incorrectly state the release of data to be unethical. However, as Senator Baker noted in her Commission Report, upon further review of USPAP, that opposition was withdrawn.

Data regarding real estate transactions are readily available; recordation of the arbitration data with the Bureau of Conveyance will allow interested consumers to better understand the market. I urge you to support and pass SB 1258, SD1 and bring light into a market that is controlled by too few individuals.

Please pass SB 1258, SD1.

Mahalo,

Robert M. Creps  
Senior Vice President  
Grace Pacific Corporation

# CITIZENS FOR FAIR VALUATION

841 Bishop Street, Suite 1500  
Honolulu, HI 96813

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March 9, 2013

## THE TWENTY-SEVENTH LEGISLATURE REGULAR SESSION OF 2013

### COMMITTEE ON CONSUMER PROTECTION & COMMERCE

Rep. Angus L.K. McKelvey, Chair  
Rep. Derek S.K. Kawakami, Vice Chair

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

Hearing: March 11, 2013, 2:00 pm; Room 325  
State Capitol, 415 South Beretania Street

Aloha Chair McKelvey, Vice-Chair Kawakami 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 Senate Bill 1258, SD1 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 2217 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, real estate appraisers when acting as arbitrators have required participants in an arbitration to agree to confidentiality agreements which effectively negates the intent of the legislature, which was to bring data, openness and transparency to market controlled by few landowners and very few commercial/industrial appraisers. Without the release of the data and analysis that support the arbitration awards, lessees are ill-equipped to make decisions involving hundreds of thousands of dollars.

Indeed, 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. However, included in the opposition testimony, was the following from USPAP which clearly shows an exception may be made "as authorized by due process of law."

4. An appraiser must not disclose confidential information or assignment results prepared for a client to anyone other than:
  - a. the client;
  - b. persons specifically authorized by the client;

- c. state appraiser regulatory agencies;
- d. **third parties as may be authorized by due process of law;**
- e. a duly authorized professional peer review committee except when such disclosure to a committee 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.

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.

## **Ua Mau Ke Ea O Ka Aina I Ka Pono The Life of the Land is Perpetuated in Righteousness**

### **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 seeks to complete that process by requiring transparency through recordation of the records of the arbitration awards with the Bureau of Conveyance.

**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.

**Added Expenses:**

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. In addition, the State would be the beneficiary of whatever income is derived from the filings.

**Vacating an Award:**

Opponents of this bill seem to be afraid that SB 1258, SD1 will create a basis for lessees to vacate arbitration awards. Again, this is just not the case. The truth is that it remains extremely difficult to vacate the award of an arbitration panel. Arbitration awards are given wide deference by the courts and judicial review is limited. There are only certain enumerated grounds under which an arbitration award can be vacated, which include evident partiality of the panel, corruption of the panel, misconduct of the panel, and the panel exceeding its powers. Mistakes of law or fact by the panel in making its award are generally not sufficient grounds to vacate an arbitration award.

**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.



Citizens for Fair Valuation

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Page 4

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

Mahalo



Michael Steiner  
Executive Director  
Citizens for Fair Valuation

Telephone: (808) 221-5955

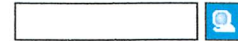
Email: [MSteiner@SteinerAssoc.com](mailto:MSteiner@SteinerAssoc.com)

Attachments: USPAP's Ethics Rule, InfoBarrel Business & Money

[http://www.infobarrel.com/USPAPs\\_Ethics\\_Rule](http://www.infobarrel.com/USPAPs_Ethics_Rule)

The Jurisdictional Exception Rule Frequently Misunderstood – Only One Know Example,  
William M. Novetny,

<http://www.appraisalcourseassociates.com/archive/newsletter/update11/jurisdictionalexception.htm>



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## USPAP's Ethics Rule

By Brockett Mar 22, 2011 Edited Apr 7, 2011 0 0

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### USPAP's Ethics Rule

The Uniform Standards of Appraisal Practice (USPAP) was created to "promote and maintain a high level of public trust in appraisal practice" and to establish "requirements for appraisers" (USPAP, 2009, p. 6). It is a requirement that all appraisers follow the ethical and performance stands given in the USPAP when they are obligated by "law or regulation, or by agreement with the client or intended users" (USPAP, 2009, p. 6). The USPAP gives their standards through definitions, rules and standards. Definitions in the USPAP include all the terminology used in the USPAP. The rules include: ethics rules, competency rules, scope of work rules, and jurisdictional exception rules. The standards include all the requirements that appraisers must follow and the ways in which these requirements must be communicated.

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An important rule addressed in the USPAP is the "ethics rule". The ethics rule "sets forth the requirements for integrity, impartiality, objectivity, independent judgment and ethical conduct" (USPAP, 2009, p. 6). It includes four different aspects about conduct, management, confidentiality and record keeping.

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The conduct section of the ethics rule is comprised of seven different rules [appraisers](#) are suggested to follow. First, an appraiser must perform "ethically and competently" with the USPAP rules (USPAP, 2009, p. 7). Second, appraisers must not have any association with criminal conduct. Third, appraisers should bring in their personal objectivity into their assignments. Fourth, an appraiser may not take sides with one party. Fifth, appraisers may not "accept an assignment that includes the reporting of predetermined opinions and conclusions" (USPAP, 2009, p. 7). Sixth, all reports must be clear and not give misleading information. Seventh, appraisers may not determine the value of a property based on characteristics such as race, gender, marital status etc.

The management section consists of three rules. First, all [payments](#) received by the appraiser for their work must be disclosed. Second, an appraiser should not accept an assignment and receive payment for any of the following reasons: a) preparing a report on a predetermined value, b) preparing a report that has a predetermined direction to benefit the client, c) preparing a report that consists of a value opinion of someone else, d) preparing a report that has a stipulated result and finally e) preparing a report that depends on the "occurrence of a subsequent event related to the appraiser's opinions and specific to the assignment's purpose" (USPAP, 2009, p. 8). Third, an appraiser should not advertise in a false or misleading manner.

The confidentiality section consists of four rules. First, the appraiser must "protect the confidential nature of the appraiser-client relationship" (USPAP, 2009, p. 8). Second, appraisers must perform their duties with good faith with the interests of the customer and the confidentiality of their information. Third, appraisers must be "aware of, and comply with, all confidentiality and privacy laws and regulations applicable" with the assignment (USPAP, 2009, p. 8). Fourth, the appraiser must not disclose any confidential information about the client or the assignment unless required by law.

The record keeping section consists of three rules. First, an appraiser must prepare a "workfile for each appraisal, appraisal review, or appraisal [consulting](#) assignment" (USPAP, 2009, p. 9). The workfile must contain the following: a) the name of the client and any other uses, b) copies of reports and documentation of media, c) summaries of "any oral reports or testimony" with the appraiser's signature and date, d) any additional information that is necessary to "support the appraiser's opinions and conclusions" (USPAP, 2009, p. 9). Second, an appraiser must keep their workfile for five years or two years (after final disposition of any judicial proceeding in which the appraiser provided testimony related to the assignment", which ever is longer (USPAP, 2009, p. 9). Third, appraisers must have custody of their records or some way of retrieving their records at

any time.

### References

The Appraisal Foundation (2009). *USPAP*, retrieved May 10, 2009 from <http://www.vanderwerffandassociates.com/USPAP.pdf>



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## The Jurisdictional Exception Rule Frequently Misunderstood -- Only One Known Example

USPAP's JURISDICTIONAL EXCEPTION RULE is intended to address assignment conditions in which there is a conflict between USPAP requirements and the requirements of federal, state or local jurisdictions. Such conflicts would preclude appraisers from complying with those conflicted parts of USPAP. In this article I will briefly review the RULE, provide a typical example of how it is misapplied, and review the only known example of a jurisdictional exception.

I came across this sole example of a jurisdictional exception during a recent recertification process I underwent in order to renew my qualification as an AQB Certified USPAP Instructor for 2010-2011. That there is only one known example of a jurisdictional exception surprised me—as it did some of my colleagues as well.

USPAP defines a jurisdictional exception as:

**JURISDICTIONAL EXCEPTION:** *an assignment condition established by applicable law or regulation, which precludes an appraiser from complying with a part of USPAP*

And regarding the RULE, USPAP states:

“The JURISDICTIONAL EXCEPTION RULE 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.”

Historically, appraisers have often thought that an assignment condition they were facing was a jurisdictional exception when in fact it was not. I will offer an example below. In a similar manner, users of appraisals were also often of the misconception that regulations, guidelines and requirements under which they were required to operate were jurisdictional exceptions when, in reality, they were not.

During the public exposure process for the changes to be incorporated into the 2010-2011 edition of USPAP, it became apparent from comments received that the ASB would have to confront the question of whether or not a continued need for the JURISDICTIONAL EXCEPTION RULE even existed—particularly in light of the fact that only one example of a jurisdictional exception was known to exist. Despite considerable input suggesting that the RULE be retired, the ASB decided to retain the rule just in case other laws that precluded USPAP compliance were to be established beyond 2011.

The general concept behind the JURISDICTIONAL EXCEPTION RULE is that if a law or regulation precludes the appraiser from complying with a part of USPAP then, and only then, should the appraiser invoke the RULE.

Here is an example based on a USPAP FAQ of an assignment condition that is not, in fact, a jurisdictional exception. This example deals with what might appear to be a conflict with the confidentiality part of USPAP, but is not.

A personal property appraiser was hired by a government agency to perform an appraisal of confiscated antiques, art and other objects of personal property. The agency has a regulation that requires the appraiser to provide copies of the appraisal report to other agencies if requested. Does this regulation create a jurisdictional exception to the Confidentiality section of USPAP's ETHICS RULE?

At first blush, this scenario would appear to warrant the application of the JURISDICTIONAL EXCEPTION RULE since USPAP requires that assignment results be kept confidential between the appraiser and the client which, in this case, is the government agency.

But to properly answer the question, we must first review USPAP's Confidentiality section requirements regarding the disclosure of assignment results.

The Confidentiality section states that the appraiser must not disclose either **confidential information** or **assignment results** to anyone other than:

- *the client;*
- *persons specifically authorized by the client;*
- *state appraiser regulatory agencies;*
- *third parties as may be authorized by due process of law; or*
- *a duly authorized professional peer review committee except when such disclosure to a committee would violate applicable law or regulation*

So, while it might first appear that USPAP prohibits sending copies of the report to other agencies, upon closer examination of the Confidentiality section, it is clear that the appraiser is allowed to disclose the report to those authorized by the client. In addition, the report may be disclosed to third parties as may be authorized by due process of law, such as would be required by the government agency's regulation requiring that copies be sent to other agencies.

In other words, the agency regulation creates an assignment condition that is permitted by USPAP, and therefore does not require a jurisdictional exception since compliance with USPAP is not being precluded by the regulation. Only when USPAP compliance is precluded would a jurisdictional exception apply.

But what is the one known example of a jurisdictional exception?

In California, Probate Referees Association are appointed and serve as officers of the court. The website for the California Probate Referees Association explains the role of a probate referee:

*... a Probate Referee's appraisal is required for probate, small estate petitions, conservatorships, and guardianship matters filed with the courts, the Probate Referee can also assist the trustees in non-probate trust matters. Probate code section 16247 specifically allows Probate Referees to provide values in trust matters which are necessary for purposes of distribution, sale of assets, tax filings or general trust valuations. Using an independent Probate Referee for such matters helps relieve the Trustee of potential conflicts of interest or liability for errors... Probate Referees' values are widely accepted by judges and the IRS as fair, accurate and impartial values.*

Probate Referees are responsible for the valuation of all types of property and, as such, are acting as "appraisers." The jurisdictional exception that would apply to Probate Referees results from the compensation arrangement established by California state law. For their valuation services, Probate Referees are paid a contingency fee that is based on a percentage of the value of subject property! Such a contingency fee arrangement is prohibited by the Management section of the ETHIC RULE which states that an appraiser must not accept a compensation agreement that is contingent upon the amount of a value opinion. Clearly, compliance with this particular part of USPAP is precluded by the fee schedule mandated for Probate Referees by the California regulation.

What steps can the Probate Referee take if he or she chooses to prepare appraisal reports in compliance with USPAP? The appraiser would be required to comply with the four action steps of the JURISDICTIONAL EXCEPTION RULE:

1. Identify the law or regulation that precludes compliance with USPAP;
2. Comply with that law or regulation;
3. Clearly and conspicuously disclose in the report the part of USPAP that is voided by that law or regulation; and
4. Cite in the report the law or regulation requiring this exception to USPAP compliance.

While the personal property appraiser is often involved with assignments in which limiting conditions and hypothetical conditions are encountered or in which extraordinary assumptions must be made, he or she will seldom, if ever, encounter jurisdictional exceptions.

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This article is excerpted from Appraisal Course Associate's 2010-2011 Online Personal Property USPAP Update Course that is soon to be published at [www.AppraisalCourseAssociates.com](http://www.AppraisalCourseAssociates.com).

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**Hearing: March 11, 2013, 2:00 pm; Room 325**

Aloha Chair McKelvey, Vice-Chair Kawakami and Members of the Committees,

My name is Clyde Kojima and I own a small plumbing supplies business in Mapunapuna. I am writing in strong support of SB 1258, SD1, 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.

Businesses need information to make informed decisions. It is time the appraisers release the data which creates the market for long-term lease rents. Without data, it is impossible to make the hard decisions that affect the bottom-line of my business and my ability to maintain operations.

The 2011 Legislature passed Act 227 to bring this data to the public. However, the appraisal community continues to frustrate the legislature's intent by forcing confidentiality agreements upon arbitration participants in order to keep the data locked away from the public scrutiny. Opposition testimony went so far as to incorrectly state the release of data to be unethical. However, as Senator Baker noted in her Commission Report, upon further review of USPAP, that opposition was withdrawn.

Data regarding real estate transactions are readily available; recordation of the arbitration data with the Bureau of Conveyance will allow interested consumers to better understand the market. I urge you to support and pass SB 1258, SD1 and bring light into a market that is controlled by too few individuals.

Please pass SB 1258, SD1.

Mahalo,

Clyde T. Kojima  
Mutual Plumbing Supply Col., Inc.  
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Testimony in Support of SB 1258, SD1 – Relating to Real Estate Appraisals

Hearing: March 11, 2013, 2:00 pm; Room 325

Ferrari of Hawaii

Aloha Chair McKelvey, Vice-Chair Kawakami and Members of the Committees,

Maserati of Hawaii

My name is Joseph P. Nicolai and I am writing in strong support of SB 1258, SD1, 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.

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Businesses need information to make informed decisions. It is time the appraisers release the data which creates the market for long-term lease rents. Without data, it is impossible to make the hard decisions that affect the bottom-line of my business and my ability to maintain operations.

JN Lotus

La Collezione Nicolai

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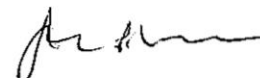
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Please pass SB 1258, SD1.

Mahalo,



Joseph P. Nicolai  
Chairman

March 9, 2013

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**Hearing: March 11, 2013, 2:00 pm; Room 325**

**Dear** Chair McKelvey, Vice-Chair Kawakami and Members of the Committees,

My name is Connie Smales and I am writing in strong support of SB 1258, SD1, 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.

We as business people need information to make informed decisions. It is time the appraisers release the data which creates the market for long-term lease rents. Without data, it is impossible to make the hard decisions that affect the bottom-line of my business and my ability to maintain operations.

Recently we had a situation where a confidentiality agreement was allowed to supercede the existing law and there was no disclosure following the arbitration. This should not be allowed to happen! We have a law on the books and SB 1258 will reinforce that law and allow the public to know how arbitrations are settled and how to plan for the future.

Please pass SB 1258, SD1.

With Aloha,

Connie Smales  
President



March 8, 2013

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Rep. Angus L.K. McKelvey, Chair  
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VIA FACSIMILE  
586-8437

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Aloha Chair McKelvey, Vice-Chair Kawakami and Members of the Committees,

My name is Darryl Wong and I am writing in strong support of SB 1258, SD1, 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.

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Please pass SB 1258, SD1.

Ma'halo,



Digitally signed by Darryl Wong  
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email=dwong@99imperial.net, c=US  
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March 8, 2013

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Hearing: March 11, 2013, 2:00 mPM, Room 325

Aloha Chair McKelvey, Vice Chair Kawakami and members of the Committee.

My name is Thomas Nakama and I am writing in strong support of SB 1258, SD1, 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.

Businesses need information to make informed decisions. It is time the appraisers release the data which creates the market for long term lease rents. Without data, it is impossible to make the hard decisions that affect the bottom line of my business and my ability to maintain operations.

The 2011 Legislature passed Act 227 to bring this data to the public. However, the appraisal community continues to frustrate the legislature's intent by forcing confidentiality agreements upon arbitration participants in order to keep data locked away from public scrutiny. Opposition testimony went so far as to incorrectly state the release of data to be unethical. However, as Senator Baker noted in her Commission Report, upon further review of USPAP, that opposition was withdrawn.

Data regarding real estate transactions are readily available: recordation of the arbitration data with the Bureau of Conveyance will allow interested consumers to better understand the market. I urge you to support and pass SB 1258, SD1 and bring light into a market that is controlled by too few individuals.

Please pass SB 1258, AS1.

Mahalo



Thomas Nakama  
President  
United Truck Rental

**kawakami2 - Rise**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Friday, March 08, 2013 8:21 AM  
**To:** CPCtestimony  
**Cc:** ghiram@petersonsign.com  
**Subject:** \*Submitted testimony for SB1258 on Mar 11, 2013 14:00PM\*

**SB1258**

Submitted on: 3/8/2013

Testimony for CPC on Mar 11, 2013 14:00PM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Gary Hiram	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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COLIN LAU

47-695 Hui Ulili Street, Kaneohe, HI 96744

March 8, 2013

VIA FACSIMILE  
586-8437

Honorable Representative Angus L. K. McKelvey, Chair  
Honorable Representative Derek S. K. Kawakami, Vice Chair  
House Members of Committee on Consumer Protection & Commerce

**RE: TESTIMONY IN SUPPORT OF MEASURE SB1258, SD1 - RELATING TO REAL ESTATE APPRAISERS - HEARING SCHEDULED FOR MONDAY, MARCH 11, 2013, AT 2:00 P.M.**


Dear Honorable Chair Angus McKelvey, Vice Chair Derek Kawakami, and Members of the House Committee on Consumer Protection & Commerce:

I support passage of SB1258 SD1 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.

Thank you

  
Colin Lau

**RICHARD HENDERSON**

P.O. BOX 655  
HILO, HAWAII 96721-0655

March 8, 2013

**THE TWENTY-SEVENTH LEGISLATURE  
REGULAR SESSION OF 2013  
COMMITTEE ON CONSUMER PROTECTION & COMMERCE  
Rep. Angus L.K. McKelvey, Chair  
Rep. Derek S.K. Kawakami, Vice Chair**

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

**Hearing: March 11, 2013, 2:00 pm; Room 325**

Honorable Chair McKelvey  
Honorable Vice-Chair Kawakami  
and Members of the Committee

I am writing in strong support of SB 1258, SD1, 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.

Businesses need information to make informed decisions. It is time the appraisers release the data which creates the market for long-term lease rents. Without data, it is impossible to make the hard decisions that affect the bottom-line of my business and my ability to maintain operations.

The 2011 Legislature passed Act 227 to bring this data to the public. However, the appraisal community continues to frustrate the legislature's intent by forcing confidentiality agreements upon arbitration participants in order to keep the data locked away from the public scrutiny. Opposition testimony went so far as to incorrectly state the release of data to be unethical. However, as Senator Baker noted in her Commission Report, upon further review of USPAP, that opposition was withdrawn.

Data regarding real estate transactions are readily available; recordation of the arbitration data with the Bureau of Conveyance will allow interested consumers to better understand the market. I urge you to support and pass SB 1258, SD1 and bring light into a market that is controlled by too few individuals.

Please pass SB 1258 SD1.

Sincerely,



EARLE M. ALEXANDER, LTD.  
141 Crystal Springs Rd, #301  
SANDPOINT, IDAHO 83864-5170  
(208) 265-0270

March 9, 2013

The Twenty-Seventh Legislature, Regular Session of 2013  
Committee on Consumer Protection and Commerce  
Rep. Angus L. K. McKelvey, Chair  
Rep. Derek S. K. Kawakami, Vice-Chair  
Members of the Committee

VIA EMAIL

CPCtestimony@Capitol.hawaii.gov

Re: Testimony in Support of SB 1258, SD1– Relating to Real Estate Appraisers  
Hearing: March 11, 2013, 2:00 pm; Room 325

Dear Chair McKelvey, Vice-Chair Kawakami, 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 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. On February 9, 2013 I sent you testimony regarding HB 693 regarding this same issue. My opinions remain the same and I urge you to move this legislation forward.

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 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 will 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.

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 consumers, lessors, and lessees when making decisions about new ground lease rent. 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.

Required recordation of the arbitration data with the Bureau of Conveyance will allow interested consumers, lessors, and lessees to better understand the ground lease rent reset market and perhaps avoid, in the future, the lengthy and costly process the CPCA lessees are still going through. Again, I urge you to support and pass SB 1258, SD1 and bring increased transparency and a more level playing field into a market which is controlled by too few entities and individuals. Thank you for your consideration.

Mahalo,

William S. Alexander  
President  
wsalexma@aol.com

March 9, 2013

COMMITTEE ON CONSUMER PROTECTION & COMMERCE

Rep. Angus L.K. McKelvey, Chair  
Rep. Derek S.K. Kawakami, Vice Chair  
Members of the Committee  
State Capitol  
Honolulu, Hawaii 96813

**RE: SB1258, SD1 Testimony in Support**  
**Hearing: March 11, 2013, 2:00pm; Room 325**

Dear Chair McKelvey, Vice-Chair Kawakami and Members of the Committees,

My name is Jason Ideta and I am writing in strong support of SB 1258, SD1. I work for a small auto parts business with 68 employees and am a lessee in the Mapunapuna area.

As a lessee, I am at a significant disadvantage when it comes to negotiating or arbitrating my leases with huge lessors like Common Wealth, Kamehameha Schools, etc. This bill will help to create transparency for both parties involved and create a more open and free market for everyone, especially for individual leases like me.

When the legislature passed Act 227, which tried to create transparency to the arbitration process, appraisers/arbitrators have insisted upon adding confidentiality clauses to hide the information and intentionally bypass the law. SB 1258 will help to fix this problem by requiring the recordation of the arbitration data with the Bureau of Conveyance.

I strongly encourage you to support and pass SB 1258, SD1 to bring openness and a little more fairness to the leasehold market that is controlled by a handful of very large landowners.

Thank you for your time and consideration.

Sincerely,

Jason Ideta  
Pacific Jobbers Warehouse, Inc.  
808-772-5922

**kawakami2 - Rise**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Saturday, March 09, 2013 2:51 PM  
**To:** CPCtestimony  
**Cc:** cnrs@interpac.net  
**Subject:** \*Submitted testimony for SB1258 on Mar 11, 2013 14:00PM\*

**SB1258**

Submitted on: 3/9/2013

Testimony for CPC on Mar 11, 2013 14:00PM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Brian Nakano	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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March 8, 2013

**VIA FACSIMILE**  
**586-8437**

Honorable Representative Angus L. K. McKelvey, Chair  
Honorable Representative Derek S. K. Kawakami, Vice Chair  
House Members of Committee on Consumer Protection & Commerce

**RE: TESTIMONY IN SUPPORT OF MEASURE SB1258, SD1 - RELATING TO REAL ESTATE APPRAISERS - HEARING SCHEDULED FOR MONDAY, MARCH 11, 2013, AT 2:00 P.M.**

Dear Honorable Chair Angus McKelvey, Vice Chair Derek Kawakami, and Members of the House Committee on Consumer Protection & Commerce:

PETITION:

I support passage of SB1258 SD1 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.

I urge your approval of this bill.

Sincerely,

Rosalind K Moore  
Print Name ROSALIND K MOORE  
Address 3358 ALOHA AVE, HAWAII, HI 96816

The following individuals submitted the same written testimony in support of SB 1258, SD 1:

James Wong

June Akina

Kaui Wong

Gail Sugita

Ross Ihara

Lori Lee

Rosalind Moore

Napualani Wong

Jordan Wong

Junedale Nakachi

Gordon Smith

Jenna Wong

Candy Ono

Owen Arock