

Testimony of the Contractors License Board

**Before the
Senate Committee on Commerce and Consumer Protection
Wednesday, February 14, 2024
9:30 a.m.
Conference Room 229 and Videoconference**

**On the following measure:
S.B. 2607, RELATING TO CONSTRUCTION**

Chair Keohokalole and Members of the Committee:

My name is Neal Arita, Chairperson of the Contractors License Board (Board). The Board offers comments on this bill.

The purpose of this bill is to revise the construction defect claims process. The Board will review this bill at its next publicly noticed meeting on February 23, 2024. The Board has testified in opposition to similar measures that amend the Contractor Repair Act.

The Board has concerns as this measure is inconsistent with the intent of the Contractor Repair Act. The Legislature enacted the Contractor Repair Act as an alternative to resolving construction disputes to reduce the need for litigation while protecting claimants' rights. This measure does not afford the claimant the opportunity to deny the contractor's offer. Page 4, lines 13 to 15, states that the claimant shall accept the offer and authorize the contractor to proceed with any repairs offered. It also takes away a claimant's ability to receive fair compensation by limiting the claimant's recovery to the total value of the contractor's offer if the claimant unreasonably rejects a proposal to inspect or an offer from the contractor. The term "unreasonably" is vague and should be defined or clarified in the interest of the claimant and the contractor. If legal action is pursued, the court is required to deny the claimant an award of attorney fees and costs, even if the claimant is the prevailing party, while the contractor shall be entitled to an award of attorney fees and costs incurred following the date of the offer.

While these amendments are proposed to address construction defect litigation, homeowners building a single-family home on their property, who will not have members to join a class action suit, must also abide by the additional requirements this measure will impose, and would be afforded limited recovery. As an alternative,

Testimony of the Contractors License Board

S.B. 2607

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perhaps a neutral third party such as a mediator or arbitrator could resolve the matter of an unreasonable rejection and fair compensation.

Thank you for the opportunity to testify on this bill.



**HAWAII STATE SENATE
COMMITTEE ON COMMERCE AND CONSUMER PROTECTION
Conference Room 229 & Videoconference
State Capitol
9:30 AM**

February 14, 2024

Subject: SB 2607 - Relating to Construction

Chair Keohokalole, Vice Chair Fukunaga, and members of the Committee:

My name is Max Lindsey, Government Relations Committee Chair of the Building Industry Association of Hawaii (BIA Hawaii). Chartered in 1955, the Building Industry Association of Hawaii is a professional trade organization affiliated with the National Association of Home Builders, representing the building industry and its associates. BIA Hawaii takes a leadership role in unifying and promoting the interests of the industry to enhance the quality of life for the people of Hawaii. Our members build the communities we all call home.

BIA Hawaii is in **strong support** of SB 2607, Relating to Construction. This bill expands the required contents of a notice of claim of construction defect served on a contractor, requires the claimant to provide actual evidence of the nature and cause of the construction defect and extent of necessary repairs along with the notice of claim, and makes it clear that each claimant must comply with the Contractor Repair Act.

We have a critical housing shortage in Hawaii. The amount of construction defect litigation in our state has reached a dire tipping point as evidenced by rising insurance costs, increased housing costs and the unavailability of government backed loans (FHA, VA, USDA, Fannie Mae and Freddie Mac) on condos with litigation, all of which preclude countless 1st time homebuyers from purchasing homes.

The proposed amendments in SB 2607 do not limit the consumers' current right to pursue claims against contractors and other industry professionals. The proposed amendments, however, are necessary to incentivize both homeowners, industry professionals, their experts, and their counsel, to fully engage and participate in the Contractor Repair Act thereby increasing the opportunity for early resolution of claims and in turn help Hawaii's housing crisis.

The bill's intent is to clarify and provide for timely inspections of homeowner's properties, and to incentivize both the industry professionals and homeowners to fully engage in the Contractor Repair Act process:

1. **Amending the Process and Timeframe re Inspection and Repairs Provides More Certainty:** By amending the process and timeframe for inspection and repairs, both contractors and homeowners will have more certainty. Establishing clear guidelines and timelines for inspections and repairs can help prevent delays and disputes, providing all parties involved with a clear understanding of the steps and timeframe for resolution. This increased certainty can lead to a more efficient and timely resolution of construction defect claims. In addition, the timeframe also provides the parties with the flexibility to agree upon a different timing for inspections based upon the needs of a particular case.

BIA Hawaii supports a slight revision to the proposed amendments to HRS 672E-4(e) in order to clarify the statement that the claimant “shall accept or deny” an offer to repair. Homeowners should retain the ability to reject an offer if they so choose subject to the limitations proposed if a reasonable offer to repair is rejected.

2. **Limiting Recovery and Foreclosing Attorney’s Fees When Offers are Unreasonably Rejected Ensures Fairness and Efficient Resolution of Claims:** Limiting recovery and foreclosing attorney’s fees when a proposal to inspect or an offer of repair is unreasonably rejected will result in quicker and fairer resolution of construction defect claims. Other states have enacted similar provisions. These provisions encourage industry professionals to provide reasonable offers to repair and discourage homeowners from rejecting reasonable offers to repair. Both promote a more efficient resolution process and prevent unnecessary costly disputes by incentivizing industry professionals to present well-reasoned offers and encouraging homeowners to fully evaluate offers that are received. It also curbs the escalation of legal costs, contributing to a more efficient and cost-effective resolution of construction defect issues.

The bill’s intent is not to require homeowners to accept unreasonable repair offers. The bill’s intent is to increase both sides’ meaningful participation in the process and to guard against parties trying to profit off of the litigation process. If an industry professional makes a reasonable offer to repair and that offer is rejected, the industry professional should not be penalized for being dragged through lengthy litigation only to end back where the contractor first started. This only results in insurance companies having to expend more fees to defend the industry professional through protracted litigation thereby increasing insurance premiums, and, in turn higher cost of housing in Hawaii.

In conclusion, the proposed changes to Section 672E-4 the Hawaii Revised Statutes represent a thoughtful and balanced approach to more effectively address construction defects in housing and in turn help address Hawaii’s housing crisis. These amendments promote early resolution ultimately benefiting and protecting both homeowners and contractors. I urge you to support and pass this legislation to enhance the fairness and efficiency of the construction defect resolution process in Hawaii and to curb the unnecessary and protracted construction defect litigation that has deepened Hawaii’s housing crisis and made housing unattainable for Hawaii’s families.

We urge you to lend your support to these amendments, and appreciate the opportunity to provide our comments on this important matter.



February 12, 2024

Senator Jarrett Keohokalole, Chair
Senator Carol Fukunaga, Vice Chair
Members of the Committee on Commerce and Consumer Protection
Thirty-Second Legislature, Regular Session of 2024

RE: **SB 2606 & SB 2607 – RELATING TO CONSTRUCTION**
Hearing Date: Wednesday, February 14, 2024 at 9:30am
Conference Room 229, State Capitol

Aloha Chair Keohokalole, Vice Chair Fukunaga and Members of the Committee,

Mahalo for the opportunity to submit testimony on behalf of D.R. Horton Hawaii LLC (“DRHH”) in **STRONG SUPPORT** of SB 2606 & SB 2607 – RELATING TO CONSTRUCTION. DRHH is one of Hawaii’s largest homebuilders and has been providing affordable housing, 1st time buyer and workforce housing for Hawaii’s families throughout the State for fifty years. D.R. Horton Hawaii is a leader in building quality homes and condominiums and is actively developing our Ho`opili master planned community in Ewa Beach-East Kapolei.

It is heartening to see with SB 2606 & SB 2607 that we are all collectively trying to solve the stark disparity between the supply and demand for much needed housing. DRHH continues to be a strong advocate for both our current homeowners and our future homebuyers when it comes to exploring solutions with industry, government, and community to reduce the cost of housing and expedite the production of it. We absolutely stand behind the homes we build and support our homeowners with legitimate and warrantable repairs. It has been our commitment over the last fifty years and will continue to be for the next fifty.

Over the last decade, we have seen the landscape of construction defect litigation change dramatically. Underwriting rising litigation risk has unfortunately become not only necessary but common practice. We have experienced firsthand the resulting negative effects: rising insurance premiums, contractors abstaining from bidding on housing projects and unnecessary additional construction costs. Not only have lawsuits increased exponentially, more disturbingly claims have become purposely overly broad to encompass all aspects of construction without any evidence of a defect or actual damage. This is a **pivotal shift** that has and will continue to further exacerbate Hawaii’s housing crisis.

DRHH has recently experienced unprecedented consequences from overly broad construction defect litigation claims that have detrimentally affected much needed housing:

- **First, overly broad construction defect litigation claims have directly halted 811 housing units set to begin construction.** These are affordable and workforce housing units designed to be building code compliant and are building permit approved.
- **Second, overly broad construction defect litigation claims have directly increased the cost of housing.** Building code compliant designs of new housing units now need to be redesigned to move forward unencumbered by ongoing lawsuits. Recent construction pricing has put this additional cost to housing upwards of \$14,000 per single family home.
- **Third and most egregious, overly broad construction defect litigation claims have directly affected our 1st time homebuyers' ability to obtain a much needed low down payment government backed mortgage.** Lack of clarity with overly broad construction defect claims have encumbered not only completed homes, but for the first time such litigation is now burdening new condominiums currently under construction. These are condominium units that were specifically designed for the 1st time homebuyer market. These units are designed to be building code compliant, are building permit approved and they are currently being constructed. However, FHA, VA, Fannie Mae and Freddie Mac have taken the position to disqualify new condominium projects with pending litigation. Without low down payment government backed loan programs and without the 20% down payment required by portfolio lending, most 1st time homebuyers and veterans are being unfairly precluded from purchasing.

This is why we strongly support SB 2606 & SB 2607. We believe both bills together will:

1. **Protect both consumers and contractors** - SB 2606 & SB 2607 will create a stronger and more equitable framework for warranty claims to be properly identified and documented, appropriately investigated and addressed in a timely manner, all **prior to** long, protracted legal proceedings. This is not occurring today, putting both homeowners and homebuilders in litigation purgatory because once a lawsuit is filed, all communications between the parties must cease. This circumvents the very intent of the Contractor Repair Act, ultimately preventing homeowners from obtaining needed repairs where actual, legitimate and warrantable damage is involved.
2. **Establish a reasonableness to mitigation versus litigation** – SB 2606 & SB 2607 will continue to allow a homeowner the ability to file a lawsuit, which is absolutely their right. However, it clarifies that if a claimant unreasonably rejects a bona fide offer to repair or mitigate, then their potential legal award should be limited to the cost of that repair offer. This change will encourage contractors to present meaningful offers and incentivize homeowners to closely evaluate offers that are received, thereby encouraging both parties to reach a resolution.
3. **Protect 1st time homebuyers** –new homes and condominiums under construction that are designed to comply with building code and have received building permit approval are placed in this same litigation purgatory. They are now being encumbered by purposely overly broad construction defect litigation claims that cause FHA, VA, Fannie Mae and Freddie Mac to disqualify lending. Our 1st time homebuyers deserve better, Hawaii's families deserve better.

February 12, 2024

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Thank you for the opportunity to share. D.R. Horton Hawaii stands behind the homes we build, we stand with our homeowners and we are advocating for Hawaii's 1st time homebuyers. We greatly appreciate the legislature and this committee for their commitment to ensuring we continue to collectively move housing forward in a positive direction for Hawaii's families.

We strongly urge the committee to pass both SB 2606 & SB 2607. Mahalo for your time and consideration, it is much appreciated.

Sincerely,



Tracy Tonaki
President
Hawaii Division



Testimony to the Senate Committee on Commerce & Consumer Protection
Wednesday, February 14, 2024, at 9:30 AM
Conference Room 229

Testimony in Support of SB 2606 & SB 2607, Relating to Construction

To: The Honorable Jarrett Kaohokalole, Chair
The Honorable Carol Fukunaga, Vice-Chair
Members of the Committee

My name is Stefanie Sakamoto, and I am testifying on behalf of the Hawaii Credit Union League, the local trade association for 47 Hawaii credit unions, representing over 864,000 credit union members across the state.

HCUL is in support of SB 2606 & SB 2607, Relating to Construction. These bills address the construction defect process.

Lawsuits filed against residential developers harm the availability of mortgage loans. Currently, potential homebuyers who are hoping to secure a government loan (Fannie Mae/Freddie Mac, VA) are unable to do so if trying to purchase a unit in a development currently under litigation. As many credit unions offer mortgage loans, we are concerned about the impact on the mortgage and lending industry.

Thank you for the opportunity to provide comments on this issue.

Testimony of
Pacific Resource Partnership

Senate Committee On Commerce And Consumer Protection
Senator Jarrett Keohokalole,, Chair
Senator Carol Fukunaga, Vice Chair

SB 2606 and SB 2607—Relating To Construction
Wednesday, February 14, 2024
9:30 A.M.

Aloha Chair Keohokalole, Vice Chair Fukunaga, and Members of the Committee:

Pacific Resource Partnership (PRP) is a nonprofit organization that represents the Hawai'i Regional Council of Carpenters, the largest construction union in the state with approximately 6,000 members, in addition to more than 250 diverse contractors ranging from mom-and-pop owned businesses to national companies.

PRP writes in **strong support** of SB 2606 and SB 2607, which protects housing options and affordability for our local residents by requiring that reasonable parameters exist around class-action lawsuits.

The loss of Hawai'i's population is due in large part to the severe shortage of affordable housing units, with many people, including young adults, essential workers such as teachers, doctors, nurses, and a disproportionate number of Native Hawaiians, migrating out of the State for mainland cities with adequate affordable housing and a lower cost of living.¹ We will continue to lose our Kama'āina and the valuable services they provide, unless we adopt reasonable policies that temper the escalating cost of housing, which includes lawsuits that primarily benefit a niche-class of attorneys.

It is our understanding that certain attorneys encourage homeowners to file claims against homebuilders in class action lawsuits that cast a wide net to include not just homes/condo units that are owned, but also homes/condo units that are currently under construction and are awaiting permit approvals from the counties. The only people benefitting from such lawsuits are the attorneys, leaving the homeowner without sufficient funds to remedy damages and first-time homebuyers without access to Federal Housing Administration, Fannie Mae, Department of Veterans Affairs, or other federally guaranteed loans that would have allowed them to qualify for low- and no-down-payment mortgages. Instead, these first-time homebuyers whose potential purchases fall under a class-action lawsuit, are required to pay the full 20% deposit, rendering them unable to qualify for a home.

SB 2606 and SB 2607 will help to reduce the unrestricted filing of unsupported construction defect claims against homebuilders that are pursued by claimants seeking damages without first providing an opportunity to resolve the claim and remedy potential defects.

¹ <https://www.dwell.com/article/hawaii-affordable-housing-crisis-86c0db3e>



(Continued From Page 1)

This bill will help to prevent frivolous lawsuits by increasing the opportunity for homebuilders and homeowners to address any potential construction defects without getting involved in costly litigation where everyone loses except for the attorneys. The legal parameters and processes detailed in SB 2606 and SB 2607 around construction defect claims will help move the state towards policies that will actually make the homeowner whole again, while supporting a mortgage environment where first-time homebuyers have an opportunity to qualify for low- and no-down-payment mortgages.

As such, we respectfully request your favorable decision on these measures. Thank you for this opportunity to submit written testimony.

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February 9, 2024

Senator Jarrett Keohokalole, Chair
Senator Carol Fukunaga, Vice Chair
Members of the Committee on Commerce and Consumer Protection
Thirty-Second Legislature, Regular Session of 2024

RE: **SB 2606 & SB 2607 – RELATING TO CONSTRUCTION**
Hearing Date: Wednesday, February 14, 2024 at 9:30am
Conference Room 229, State Capitol

Aloha Chair Keohokalole, Vice Chair Fukunaga and Members of the Committee,

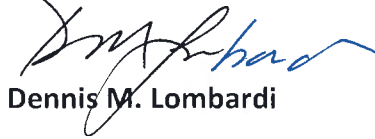
I wholeheartedly **SUPPORT** SB 2606 & SB 2607 – RELATING TO THE CONTRACTOR REPAIR ACT proposing changes to Hawai'i's construction defect legislation, particularly the emphasis on specificity in notice of claims, requiring actual evidence of the construction defect and discouraging the rejection of reasonable offers. Based on models adopted in various mainland states, the amendments promise to bring clarity and efficiency to the claim resolution process. By mandating detailed descriptions of alleged defects and discouraging the rejection of reasonable offers, homeowners and contractors can engage in transparent and productive dialogue, significantly reducing the likelihood of ambiguous or unsubstantiated claims and avoiding potentially significant delays to legitimate needed repairs. This approach aligns with best practices observed in other jurisdictions and is a progressive step toward fostering a constructive and equitable resolution framework in Hawai'i without undue construction litigation.

Unfortunately for Hawai'i, recent construction defect litigation has caused two significant and unprecedented effects on housing in Hawai'i. First, broad claims have halted hundreds of new housing units set to begin construction. Second, and more alarming, broad claims have prohibited the ability of 1st time homebuyers and affordable homebuyers to obtain a needed government backed mortgage. Lack of clarity and lack of actual evidence of construction defects in claims has encumbered new condominiums currently under construction. As a result, FHA, VA, Fannie Mae and Freddie Mac have taken the position to disqualify new condominium projects

with pending litigation. Without low down payment government backed loan programs and without the 20% down payment required by portfolio lending, most 1st time homebuyers, affordable homebuyers, and veterans are unfairly precluded from purchasing. This has only further exacerbated Hawai'i's dire housing crisis. As the Governor indicated in his State of the State address, we should collectively address and improve policies and processes that can impede the development of housing. In doing so, we recognize that housing is a "human right." These bills take a step forward in improving the processes that impede development of affordable housing for Hawai'i residents.

Hawai'i's contractors stand behind the quality projects they build. These amendments will allow Hawai'i's contractors an opportunity to stand behind their work, correct and repair where appropriate, and at the same time protect Hawai'i's homeowners. I strongly urge the Committee to support these amendments for the benefit of homeowners, contractors, home buyers and the overall efficiency of the construction defect resolution process in our state.

Sincerely,



Dennis M. Lombardi



holomua

COLLABORATIVE

OUR MISSION

To support and advance public policies that make Hawai'i affordable for all working families.

OUR VISION

Collaborative, sustainable, and evidence-based public policies that create a diverse and sustainable Hawai'i economy, an abundance of quality job opportunities, and a future where all working families living in Hawai'i can thrive.

BOARD MEMBERS

Jason Fujimoto
Meli James, *Board Chair*
Micah Kāne
Brandon Kurisu
Mike Mohr
Brad Nicolai
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Committee: Senate Committee on Commerce and Consumer Protection
Bill Number: SB 2607, Relating to Construction
Hearing Date and Time: February 14, 2024 at 9:30am (Room 229)
Re: Testimony of Holomua Collaborative in support

Aloha Chair Keohokalole, Vice Chair Fukunaga, and Committee members:

We write in support of SB 2607, Relating to Construction. This bill expands the required contents of a notice of claim of construction defect served on a contractor. It requires the claimant to provide actual evidence of the nature and cause of the construction defect and extent of necessary repairs along with the notice of claim. It amends the process and timeframe for a claimant to accept a contractor's proposal to inspect and authorize the contractor to proceed with repairs. And it limits the amount a claimant can recover if the claimant unreasonably rejects a contractor's proposal to inspect or an offer to remedy.

As an organization that is devoted to finding ways to keep all local working families in Hawai'i by making sure they can afford to stay, preventing unnecessary increases to the cost of home building is a critical part of the puzzle. This bill does so in a way that is safe, reasonable, and makes common sense.

Recent legal battles—based on overly broad defect litigation claims—have already hindered the ability of first-time homebuyers to secure government-backed mortgages, exacerbating Hawaii's critical housing shortage. The ambiguity and lack of concrete evidence regarding these overly broad defect claims has created obstacles for newly constructed home projects. As a result, entities like the Federal Housing Administration, the Veterans Administration, Fannie Mae, and Freddie Mac have all been disqualifying new housing projects *because* they are stuck in ongoing—and needless—litigation.

With limited access to government-backed loan programs that can reduce the large 20% down payment typically required by commercial lending, many local first-time homebuyers and veterans are being excluded from the housing market as a direct result of this litigation.

This means local families are being stopped from buying homes that could otherwise keep them in Hawai'i. Local families are being prevented from buying homes they *want* to buy.

This is not a hypothetical problem. Construction on over 800 homes and condominiums statewide has now stopped. These legal disputes are skyrocketing construction costs, inflating insurance premiums, necessitating additional expenditure on legal underwriting, and prompting structural redesigns.

We all want our laws to protect home safety. But this is not that. This is simply exploiting loopholes in current law that are preventing homes from being built—homes that have been specifically designed to comply with existing building codes.

This bill will continue to allow any homeowner to file a lawsuit. It simply clarifies that if a claimant unreasonably rejects a true offer to repair or mitigate, then their potential legal award should be limited to the cost of that repair offer. It also creates a stronger and fairer framework for warranty claims to be properly identified and documented, and appropriately investigated and addressed in a timely manner, before legal proceedings being.

Finally, it's important to note that frivolous class action lawsuits increase the cost of insurance that home builders must purchase. This cost is invariably passed on to the consumer. And whether that consumer is the homeowner themselves—or a local resident renting from a homeowner—it increases the cost of housing for local working families. In addition, it forces home builders to modify their building methods, which may not be the best solution either for the ultimate resident of the home, or for the quality of the build.

This is a sensible bill that will help us to continue building safe, affordable homes for local working families in Hawai'i, and we urge you to support it.

Sincerely,



Josh Wisch
President & Executive Director

LIPP SMITH LLP

Harbor Court Commercial Tower
55 Merchant St., Suite 1850
Honolulu, HI 96813

February 12, 2024

Subject: OPPOSITION TO SB2607-RELATING TO CONSTRUCTION

Dear Chair Jarrett Keohokalole, Vice Chair Carol Fukunaga, and Members of the Committee on Commerce and Consumer Protection:

We hereby submit this testimony to **OPPOSE SB2607-RELATING TO CONSTRUCTION.**

We are lawyers who have served and continue to serve as Hawai'i State and Federal Court-appointed class action counsel. In this capacity, we have represented and represent tens of thousands of Hawai'i homeowners with construction defects posing serious life and safety risks. To offer a very small sense of the kinds of construction defects we litigate, we attached photographs from just one home out of thousands at issue.

It goes without saying that Hawai'i's tropical environment poses known, ever-increasing risks of dangerous winds, hurricanes, and flooding. It also goes without saying that Hawai'i's tropical environment can damage and destroy cheap building products, including structural metal. Putting up more roadblocks to deter and prevent homeowners from pursuing righteous claims for critical life and safety defects is anti-consumer and will endanger Hawai'i homeowners, their families, and their neighboring communities. The Lahaina wildfire tragedy is a horrific reminder that Hawai'i homeowners and residents are extremely vulnerable to powerful natural catastrophes.

SB2607 undermines the core purposes of the Contractor Repair Act and, by deterring and foreclosing construction claims, risks endangering homeowners and residents of Hawai'i.

When enacting the Contractor Repair Act, or SB2358 in the Regular Session of 2004, the Senate Committee on Judiciary and Hawaiian Affairs found that "this measure provides homeowner and others suffering from construction defects in their residences and premises with a speedy and precise resolution to their problems.... This measure enables the resolution of claims for construction defects without incurring the high costs of litigation." Sen. Stand. Com. Rep. 2790 (2004).

SB2607 undermines the Contractor Repair Act's core purposes in at least three ways.

First, SB2607 does not "provide[] homeowner and others suffering from construction defects in their residences and premises with a ... precise resolution to their problems." Rather, it seeks to force homeowners to

accept a contractor's offer, regardless of whether the offer is fair or will even adequately remedy the construction defect.

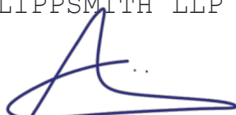
Second, SB2607 does not "enable[] the resolution of claims for construction defects without incurring the high costs of litigation." Instead, SB2607 seeks to penalize homeowners who reject pre-litigation offers by making them pay for their contractor's attorney fees and costs for litigation. Enacting SB2607 would not reduce attorney fees and costs for litigation—it would just risk shifting **all** attorney fees and costs for litigation to homeowners. These penalties are anti-consumer, especially since they seek to penalize even homeowners **who prevail on their claims**.

Third, SB2607's subjective triggers (1) damages caps and (2) the shifting of attorney fees and costs will prolong litigation and delay resolution of claims. SB2607 seeks to impose damages caps and shift attorney fees and costs "[i]f a claimant unreasonably rejects a proposal to inspect ... or unreasonably rejects an offer" Determining whether a homeowner was unreasonable in a pre-litigation claims process is subjective and will embolden and require more litigation and expense, not less. Modifying the Contractor Repair Act to increase litigation of its provisions is hardly consistent with the Contractor Repair Act's purposes of speedy resolution, litigation reduction, and curbing litigation expense.

Thank you for considering our opposition to SB2607.

Sincerely,

LIPPSMITH LLP

A handwritten signature in blue ink, appearing to read "Graham B. LippSmith", with a stylized flourish at the end.

Graham B. LippSmith

ATTACHMENT 1

HD Strap:



HD Strap:



MAS Strap:



MAS Strap:



Metal Sill Track:



Metal Sill Track:





1003 Bishop Street, Suite 1180 Honolulu, Hawaii 96813 808.369.8393 808.369.8392 Fax

February 12, 2024

Senator Jarrett Keohokalole, Chair
Senator Carol Fukunaga, Vice Chair
Members of the Senate Committee on Commerce and Consumer Protection
Thirty-Second Legislature, Regular Session of 2024

Re: SB 2607 – RELATING TO CONSTRUCTION: Testimony in Opposition
Hearing – Wednesday, February 14, 2024 in Conference Room 229, State Capitol

Chair Keohokalole, Vice Chair Fukunaga, and Members of Committee,

Our firm OPPOSES HB 2607 – RELATING TO CONSTRUCTION, proposing amendments to the Contractor Repair Act under Hawai'i Revised Statute § 672E, which would allow developers and general contractors to bully property owners into accepting low-ball offers to repair construction defects.

I am a partner in the Honolulu office of the law firm Kasdan Turner Thomson Booth, LLLC. Our firm is a Hawaii registered Limited Liability Law Corporation representing homeowners and associations in construction defect matters.

My firm currently represents over 2,000 unit owners in various high-rise buildings throughout Oahu, including buildings which are over 88% workforce housing, as well as luxury and mixed occupancy buildings. We also presently represent over 4,500 property owners in both single-family detached and townhome developments throughout the state of Hawaii in a certified class action lawsuit regarding corroded foundation systems, and over 1,250 homeowners in a certified class action in Ewa Beach concerning corroded foundation hardware.

My firm also previously represented over 4,000 homeowners in a class action involving homes in the Ewa Beach area concerning corroded foundation hardware, where essentially each and every home has had the entirety of their foundation hardware replaced as a result of hard-fought litigation.

Hawaii requires that all property owners go through the process under Hawaii Revised Statutes §672E (the "Contractor Repair Act") prior to filing a construction defect lawsuit. The Contractor Repair Act provides an opportunity for contractors to make an offer to repair or pay for repairs of construction defects, and provides an opportunity for both parties to settle the matter without litigation.

There is currently no obligation for property owners to accept the contractor's offer—and for good reason. The contractor's interest is to resolve the dispute at the lowest possible price. The homeowner's interest is to make sure that there is an acceptable repair or enough compensation to pay for acceptable

Table with 5 columns: HAWAII*, ARIZONA, CALIFORNIA (SOUTHERN), CALIFORNIA (NORTHERN), NEW MEXICO. Each column lists office address, phone, and fax numbers.

*KASDAN TURNER THOMSON BOOTH LLLC PRACTICE IS IN AFFILIATION WITH KASDAN TURNER THOMSON BOOTH LLP

repairs. Where the contractor has no interest in resolving the matter or is unwilling to make an acceptable offer, litigation becomes the only option for resolution. If the property owner were forced to accept the contractor's offer, they could be left holding the bag—forced to live with an incomplete or improper repair or responsible for covering the difference to pay for the contractor's defective work.

SB 2607 represents the unilateral interests of developers and contractors and weaponizes the Contractor Repair Act to their benefit. It would amend the Contractor Repair Act to force homeowners to accept a contractor's offers. It includes obligatory language that "the claimant *shall* accept the offer and authorize the contractor to proceed with any repairs" SB 2607 at ¶ (e). Critically, it threatens to punish a property owner who "unreasonably rejects" an offer by: (1) limiting any recovery to the value of the initial offer made by the contractor; (2) denying the property owner any attorney's fees and costs, otherwise allowable by law, and (3) awarding the contractor with all attorney's fees and costs incurred after the date of the offer "*regardless of whether the claimant is determined to be the prevailing party.*"

There is no explanation under the statute as to what is considered "unreasonable," which creates significant concern for any property owner that wants to reject an inadequate offer. Contractors can therefore use the amended language to bully homeowners into accepting offers for insufficient repairs or lowball offers for payment. Homeowners who are faced with a lowball offer would have to accept the offer or face the threat of being on the hook to pay for substantial contractor attorney's fees.

Our firm strongly urges this Committee to protect the rights of the homeowners and purchasers of real property to seek adequate compensation for construction defects, and stop this bill from moving forward.

Very Truly Yours,



Christopher K. Hikida
Kasdan Turner Thomson Booth LLLC



ASHFORD + WRISTON
A LIMITED LIABILITY LAW PARTNERSHIP LLP

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February 12, 2024

The Honorable Jarrett Keohokalole, Chair
The Honorable Carol Fukunaga, Vice Chair
Members of the Senate Committee on Commerce and Consumer Protection
Thirty-Second Legislature, Regular Session of 2024

RE: **SB 2606 & SB 2607 – RELATING TO CONSTRUCTION**
Hearing Date: Wednesday, February 14, 2024 at 9:30am
Conference Room 229, State Capitol

Aloha Chair Keohokalole, Vice Chair Fukunaga and Members of the Committee,

I strongly **SUPPORT** SB 2606 & SB 2607 – RELATING TO THE CONTRACTOR REPAIR ACT proposing changes to Section 672E-3 and -4 of the Hawaii Revised Statutes relating to construction defects in design and materials used to build residential product.

The law as it exists today is inadequate and unfair. The existing law does not require adequate specificity in terms of describing the particular defect being alleged. Developers, contractors, and material providers are left to guess what the nature of an alleged defect is and its impact. If a party is charged by a homeowner or their attorney with vague or broad claims how can the developer, contractor or material supplier offer a remedy, replacement or repair work. The inherent unfairness resulting can be fixed by requiring a minimum threshold amount of explanation of an alleged problem at a level of specificity that can be determinative of whether a problem exists or not, and if present, what steps should be taken to address the problem.

The recent wave of construction defect litigation affecting several developments in our State has taken advantage of this lack of specificity to intentionally broaden the scope of alleged impact to increase the number of parties involved in class action lawsuits. The legitimate merits of an alleged defect to be cured by a developer or contractor is now being supplanted by the legal leverage engendered by a class action lawsuit over a project. This is particularly true for condominium projects where buyers need government backed financing. Recently, FHA, VA, Fannie Mae and Freddie Mac have taken the position to disqualify new condominium projects with such pending litigation. Without low down payment government backed loan programs and without the 20% down payment required by portfolio lending, our veterans and other first time buyers are being used as hostages in this economically motivated legal environment.

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The Honorable Jarrett Keohokalole, Chair
The Honorable Carol Fukunaga, Vice Chair
Members of the Senate Committee on Commerce and Consumer Protection
February 12, 2024
Page 2

In conclusion, the proposed changes as set forth in S.B. 2606 and S.B. 2607 are designed to avoid unnecessary litigation and, more importantly, to remedy legitimate complaints filed by homebuyers. Developers and contractors in Hawaii realize that providing effective and timely service and a reasonable offer under Chapter 672E HRS to buyers is important as it generates good will and potential referrals from friends and family members. Those in the housing industry stand by their product and should not be penalized for wanting to service their buyers in a positive and timely way.

Therefore, I respectfully ask that you and your committee support the above-mentioned bills.

Very truly yours,

ASHFORD & WRISTON



Benjamin A. Kudo

BAK:st

February 14, 2024

The Honorable Jarrett Keohokalole, Chair

Senate Committee on Commerce and Consumer Protection
State Capitol, Conference Room 229 & Videoconference

RE: Senate Bill 2607, Relating to Construction

HEARING: Wednesday, February 14, 2024, at 9:30 a.m.

Aloha Chair Keohokalole, Vice Chair Fukunaga, and Members of the Committee:

My name is Lyndsey Garcia, Director of Advocacy, testifying on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawaii and its over 11,000 members. HAR **supports** Senate Bill 2607, which revises the construction defect claims process.

Recent litigation over construction defects have posed significant challenges for housing in Hawaii. These lawsuits, which can be frivolous, have stalled housing developments. First-time homebuyers are particularly affected, as these claims hinder their access to government-backed mortgages. The lack of clear evidence in these claims has also burdened new condominium projects. Consequently, FHA, VA, Fannie Mae, and Freddie Mac have disqualified condominium projects facing litigation. Without access to low down payment programs and lacking the 20% down payment required by portfolio lending, many first-time homebuyers and veterans are unable to purchase homes.

As such, this measure may help to prevent frivolous lawsuits by giving homebuilders and homeowners more chances to resolve construction issues without expensive legal battles.

Mahalo for the opportunity to testify on this measure.



February 14, 2024

TO: HONORABLE JARRETT KEOHOKALOLE, CHAIR, HONORABLE CAROL FUKUNAGA, VICE CHAIR, COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

SUBJECT: **SUPPORT OF S.B. 2607, RELATING TO CONSTRUCTION.** Revises the construction defect claims process.

HEARING

DATE: Wednesday, February 14, 2024
TIME: 9:30 a.m.
PLACE: Capitol Room 229

Dear Chair Keohokalole, Vice Chair Fukunaga and Members of the Committee,

The General Contractors Association of Hawaii (GCA) is an organization comprised of approximately five hundred (500) general contractors, subcontractors, and construction related firms. The GCA was established in 1932 and is the largest construction association in the State of Hawaii. Our mission is to elevate Hawaii's construction industry and strengthen the foundation of our community.

GCA **supports** S.B. 2607, which revises the construction defect claims process.

It's no secret that the cost of housing, including construction financing and insurance costs have led to a critical shortage of housing in Hawaii. Yet new developments being built with first time homebuyers in mind are being put on hold because frivolous lawsuits can restrict financing options for homebuyers. This scenario sees promising housing developments aimed at first-time homebuyers facing unnecessary delays and financial hurdles due to lawsuits.

As a result of these frivolous lawsuits many first-time homebuyers are unable to obtain financing through FHA, Fannie Mae, VA or other federally guaranteed loans and are unable to purchase. In fact, 3 in 4 homebuyers could not afford the initial downpayment for a unit without government-backed financing options, and owner-occupant buyers in some projects have plummeted to only 38% of homebuyers because of their inability to afford the higher downpayments required for traditional loans. These legal challenges not only escalate home and insurance costs but also amplify the overall expense for developers, subsequently impacting housing affordability. What's more is that many builders are choosing not to go forward with construction due to concerns of frivolous litigation, including at least one affordable housing project.

SB 2607, together with SB 2606, would help to prevent frivolous lawsuits by increasing the opportunity for homebuilders and homeowners to address any potential construction defects without costly litigation. Specifically, these bills would:



**GENERAL
CONTRACTORS
ASSOCIATION
OF HAWAII**

1. Provide better notice or detail of alleged defect;
2. Require evidence of any alleged defect;
3. Amending the process and timeframe for inspection; and
4. Limiting recovery to the cost of mitigating the defect and attorney's fees when a proposal to Inspect or an offer to repair is unreasonably rejected.

The emphasis on providing detailed notices and evidence of potential defects is pivotal, ensuring both parties have a comprehensive understanding of the issues. This approach encourages collaborative problem-solving, reducing the likelihood of misunderstandings and baseless claims. Requiring claimants to furnish specific evidence enhances the validity of construction claims, fostering fair assessments and informed decision-making, ultimately leading to expedited resolutions and accurate damage assessments.

These proposed changes offer homeowners an opportunity to address conflicts and rectify potential defects in a timely manner, bypassing the protracted litigation process. Emphasizing early notification is a strategic move that promises to contribute significantly to the swift resolution of construction issues, benefiting all stakeholders involved. For these reasons, I strongly urge this committee to pass SB 2606 and 2607 to help alleviate some of the increasing costs of housing for local families.

Thank you for the opportunity to provide testimony on this measure.

▪ February 12, 2024

The Honorable Jarrett Keohokalole, Chair
The Honorable Carol Fukunaga, Vice Chair
and Members of the Senate Committee on Commerce and Consumer Protection

Re: Testimony - SB 2606, Relating to Construction
SB 2607 Relating to Construction
Hearing: February 14, 2024 at 9:30 AM
Conference Room 229

Dear Chair Keohokalole, Vice Chair Fukunaga and Committee Members:

Stanford Carr Development (SCD) is writing to collectively **support** SB 2606 and SB 2607 that propose to establish additional requirements for notices of claims of construction defects and further revises the defect claims process.

The existing Contractor Repair Act §672E-3 requires 90-day advance notice prior to filing a legal complaint and for the claim to be described in detail. However, claims are often broad and vague. We support the proposed amendments that require additional specificity to the details of the alleged defect prior to the filing a legal complaint for the recovery of damages. We also support the proposed changes to HRS §672E-4 requiring the claimant and the contractor to cooperate in the timely facilitation of an inspection and the potential to repair without engaging in litigation.

While Bills 2606 and 2607 appear to burden consumers with added requirements when seeking relief from defective workmanship, in fact the bill protects consumers from costly litigation advised by legal counsels who purport to protect their clients' interest, but serve only their own.

Time and time again, our firm has witnessed arbitrary and capricious complaints of vaguely described construction defects authored by perennial "legal" firms seeking to deplete entire insurance policies under the guise of protecting their client – often capturing most settlements as attorney fees for themselves, leaving their clients to fund the repairs, if any, via special assessments, e.g., Kehalani Gardens.

The myth of the greedy developer providing shotty workmanship or otherwise unworthy products has captured the fears of home-buyers and law-makers alike, transforming the process of contractor repair into a cacophony of multi-million-dollar legal battles that largely ignore whether the alleged complaint itself is relieved.

In addition to the legal armaments developers and contractors must now employ when inspecting complaints of alleged defects, and the fact that alleged defects are often not repaired after such a settlement, the insurance markets have taken notice. Over the course of the last two decades, insurance premiums for General Liability policies - those which protect a contractor or developer from legal action such as described above – have grown exorbitantly relative to the cost of construction if providers are willing to insure at all.

Over time, barring a change to this trend, eventually it will be financially impossible to insure, and therefore build, medium density for-sale housing such as duplexes, townhouses, or low-rise multi-family. An entire generation of malfeasance on the part of over-zealous attorneys reaping the benefits of uninformed homeowner's associations coupled with a de minimis, albeit legitimate, volume of material construction defects is leading to an era in which the most affordable type of housing one could build or buy, is too risky.

Large scale multi-family projects have greatly decreased in the last 20 years, leading to the lion's share of new housing entrenched in single-family or high-rise development. The abuse of the Contractor Repair Act in its current state is a powerful influence in that trend, and will continue to be absent of legislation such as this. As a developer for over 30 years, who always warrants our workmanship, and on behalf of others like myself or young men and women born in the state looking to stay in the state provided they can afford to do so, we simply request an opportunity to remedy in good faith rather than waste precious time and money enriching attorneys.

Thank you for the opportunity to offer comments on this measure.

Respectfully,

A handwritten signature in black ink, appearing to read 'Stanford S. Carr', with a long horizontal flourish extending to the right.

Stanford S. Carr

THE GENTRY COMPANIES



February 12, 2024

The Honorable Jarrett Keohokaiole, Chair
The Honorable Carol Fukunaga, Vice Chair
Members of the Senate Committee on Commerce and Consumer Protection
State House of Representatives
State Capitol
Honolulu, HI 96813

Subject: **S.B. 2606 RELATING TO CONSTRUCTION**
S.B. 2607 RELATING TO CONSTRUCTION
Hearing: Wednesday, February 14, 2024; 9:00 am
Conference Room 229, State Capitol

Dear Chair Keohokaiole, Vice Chair Fukunaga, and Members of the Committee,

My name is Debbie Luning and I am testifying on behalf of Gentry Homes, Ltd. in strong **SUPPORT** of the subject bills which propose much-needed changes to sections 672E-3 and 672E-4, HRS, relating to repairs of construction defects in housing. More specifically, they require more precise details of a construction defect claim; establish clearer guidelines and timelines for inspections and repairs; and discourage the rejection of reasonable offers to correct the defects. We believe that these protections are necessary to streamline the claim resolution process and to help avoid unnecessary legal disputes involving often purported, but unsubstantiated, construction defect claims. Unless these legal disputes are effectively thwarted, Hawaii's housing crisis will only worsen because of the detrimental impacts of such lawsuits on not only potential homebuyers, but the construction industry as a whole.

Steps must be taken to clarify laws relating to construction defect claims; otherwise, the problem will continue to worsen. As mentioned in DR Horton's testimony, FHA, VA, Fannie Mae and Freddie Mac have taken the position to disqualify new condominium projects with pending litigation. Without low down payment, government-backed loan programs, most local first-time homebuyers and veterans will be unable to purchase a home of their own in Hawaii. As a developer of workforce housing for local families, we find this to be both undesirable and unacceptable.

We urge you to support these measures and to pass them out of your Committee. Mahalo for your consideration.

Sincerely,

GENTRY HOMES, LTD.

A handwritten signature in black ink that reads "Debra Luning". The signature is fluid and cursive.

Debra M. A. Luning
Director of Governmental Affairs and
Community Relations



Paradigm
CONSTRUCTION LLC

February 3, 2024

Senator Jarrett Keohokalole, Chair
Senator Carol Fukunaga, Vice Chair
Members of the Committee on Commerce and Consumer Protection
Thirty-Second Legislature, Regular Session of 2024

RE: **SB 2606 & SB 2607 – RELATING TO CONSTRUCTION**
Hearing Date: Wednesday, February 14, 2024 at 9:30am
Conference Room 229, State Capitol

Aloha Chair Keohokalole, Vice Chair Fukunaga and Members of the Committee,

I wholeheartedly **SUPPORT** SB 2606 & SB 2607 – RELATING TO THE CONTRACTOR REPAIR ACT proposing changes to Hawaii's construction defect legislation, particularly the emphasis on specificity in notice of claims, requiring actual evidence of the construction defect and discouraging the rejection of reasonable offers. Drawing inspiration from successful models in various states, the amendments promise to bring clarity and efficiency to the claim resolution process. By mandating detailed descriptions of alleged defects and discouraging the rejection of reasonable offers, homeowners and contractors can engage in transparent and productive dialogue, significantly reducing the likelihood of ambiguous or unsubstantiated claims and avoiding potentially significant delays to legitimate needed repairs. This approach aligns with best practices observed in other jurisdictions and is a progressive step toward fostering a constructive and equitable resolution framework in Hawaii.

Equally as important, recent construction defect litigation has caused two significant and unprecedented effects on housing in Hawaii. First, broad claims have halted hundreds of new housing units set to begin construction. Second, and more alarming, broad claims have prohibited the ability of 1st time homebuyers to obtain a needed government backed mortgage. Lack of clarity and lack of actual evidence of construction defects in claims has encumbered new condominiums currently under construction. As a result, FHA, VA, Fannie Mae and Freddie Mac have taken the position to disqualify new condominium projects with pending litigation. Without low down payment government backed loan programs and without the 20% down payment required by portfolio lending, most 1st time homebuyers and veterans are unfairly precluded from purchasing. This has only further exacerbated Hawaii's dire housing crisis.

Hawaii's contractors stand behind the quality projects they build, which these amendments will allow them to equitably do and at the same time protect Hawaii's homeowners. I strongly urge the Committee



Paradigm
CONSTRUCTION LLC

to support these amendments for the benefit of homeowners, contractors, homebuyers and the overall efficiency of the construction defect resolution process in our state.

Sincerely,

Alex M Kwon
President

Gray • Hong • Nojima & Associates, Inc.

CONSULTING ENGINEERS

201 Merchant Street, Suite 1900
Honolulu, Hawaii 96813-2926
Telephone: (808) 521-0306
email@grayhongnojima.com
www.grayhongnojima.com



February 9, 2024

TESTIMONY SUBMITTED ONLINE

Senator Jarrett Keohokalole, Chair
Senator Carol Fukunaga, Vice Chair
Members of the Committee on Commerce and Consumer Protection
Thirty-Second Legislature, Regular Session of 2024

RE: SB 2606 & SB 2607 – RELATING TO CONSTRUCTION
Hearing Date: Wednesday, February 14, 2024 at 9:30am
Conference Room 229, State Capitol

Aloha Chair Keohokalole, Vice Chair Fukunaga and Members of the Committee,

I am writing to express my strong **SUPPORT** of SB 2606 & SB 2607 – RELATING TO THE CONTRACTOR REPAIR ACT proposing changes to Section 672E-3 and -4 of the Hawaii Revised Statutes relating to construction defects in housing. The primary reason for my support is the emphasis on protecting both contractors, homeowners and now 1st time homebuyers by requiring specificity in the notice of claim, establishing clear guidelines and timelines for inspections and repairs and discouraging the rejection of reasonable offers. These protections are pivotal to streamline the claim resolution process and mitigate the unnecessary legal disputes that have aggravated Hawaii’s housing crisis and made housing unattainable for Hawaii’s families.

Recent construction defect litigation has now impacted 1st time homebuyers’ ability to obtain a needed government backed mortgage, further deepening Hawaii’s housing crisis. Lack of clarity and actual evidence of construction defect claims have encumbered new condominiums currently under construction. As a result, FHA, VA, Fannie Mae and Freddie Mac have taken the position to disqualify new condominium projects with pending litigation. Without low down payment government backed loan programs and without the 20% down payment required by portfolio lending, most 1st time homebuyers and veterans are unfairly foreclosed from purchasing.

The legislation’s emphasis on detailing the construction defect in the notice of claim with particularity and specificity is a crucial improvement. This requirement ensures that both parties have a clear understanding of the actual issue at hand supporting the core intent of HRS Section 672E. The proposed amendments will also facilitate more effective communication, transparency and accuracy in the process, thus reducing the likelihood of misunderstandings and frivolous or unsubstantiated claims that have now affected access to critically important FHA, VA, Fannie Mae and Freddie Mac loan programs. Requiring claimants to provide actual evidence of the construction defect promotes transparency and helps validate construction defect claims. This benefits both contractors and homeowners by providing a basis for a more precise, timely and effective remedy, without litigation. It will also provide a basis upon which mortgage lending on new housing under construction, without legitimate evidence of a construction defect, could continue offering much needed government backed loans.

Senator Jarrett Keohokalole, Chair
Senator Carol Fukunaga, Vice Chair
Members of the Committee on Commerce and Consumer Protection
February 9, 2024
Page 2

In conclusion, the proposed changes align with the principles of proactive conflict resolution, promoting a collaborative approach to addressing construction defects in Hawaii. The proposed changes are pivotal to streamline the resolution process and mitigate the deluge of unnecessary legal disputes that have directly affected 1st time homebuyers' and veterans' ability to obtain a low down payment FHA, VA, Fannie Mae or Freddie Mac loan and that have only deepened Hawaii's housing crisis and made housing further beyond reach for Hawaii's families.

I urge you to lend your support to these amendments.

Sincerely,

GRAY, HONG, NOJIMA & ASSOCIATES, INC.

A handwritten signature in blue ink, appearing to read "Michael H. Nojima", with a stylized flourish at the end.

Michael H. Nojima, PE, LEED AP
Vice President

Frederick Lau
Fred Lau Hawaiian Landscape Co. Inc.
171 Waokanaka Place
Honolulu, Hi. 96817
Feb. 9, 2024

Senator Jarrett Keohokalole, Chair
Senator Carol Fukunaga, Vice Chair
Members of the Committee on Commerce and Consumer Protection
Thirty-Second Legislature, Regular Session of 2024

RE: **SB 2606 & SB 2607 – RELATING TO CONSTRUCTION**
Hearing Date: Wednesday, February 14, 2024 at 9:30am
Conference Room 229, State Capitol

Aloha Chair Keohokalole, Vice Chair Fukunaga and Members of the Committee,

I am writing to express my strong **SUPPORT** of SB 2606 & SB 2607 – RELATING TO CONSTRUCTION proposing changes to Section 672E-3 and -4 of the Hawaii Revised Statutes relating to construction defects in housing.

These amendments are crucial for fostering a fair, transparent and efficient process for homeowners as well as contractors in addressing construction defects. These amendments are also critical to curbing unnecessary and protracted lawsuits that have resulted in increased insurance costs on the new construction of much needed housing.

Even more important to Hawaii's working families, recent construction defect litigation has had an unprecedented effect on 1st time homebuyers' ability to obtain a needed government backed mortgage. This has only further exacerbated Hawaii's housing crisis. Lack of clarity and actual evidence of construction defect claims have encumbered not only completed homes but new condominiums currently under construction as well. As a result, FHA, VA, Fannie Mae and Freddie Mac have taken the position to rescind lending approvals on new condominium projects with pending litigation. Without low down payment government backed loan programs and without the 20% down payment required by portfolio lending, most 1st time homebuyers and veterans are unfairly preempted from purchasing a home.

1. Specificity in Claim Notices Ensures Clarity: The emphasis on detailing the construction defect in the notice of claim with particularity and specificity is a crucial improvement. This requirement ensures that both parties have a clear understanding of the issues at hand, facilitating more effective communication, transparency and accuracy and reducing the likelihood of misunderstandings and frivolous or unsubstantiated claims. The amendments seek to clarify and strengthen the prelitigation notice requirements consistent with other states that

have adopted similar legislation (California, Colorado, Nevada, Florida) to decrease the number of unsubstantiated claims, encourage early resolution of claims, and reduce the cost of housing and insurance. Clear and detailed notice helps contractors pinpoint the alleged issues, enabling them to address the concerns more effectively and efficiently.

2. Evidence Submission Promotes Transparency and Efficient Resolution of Claims: Requiring claimants to provide actual evidence of the construction defect, such as expert reports, photographs, videotapes, and testing results, promotes transparency and helps validate construction defect claims. This provision ensures that contractors have access to comprehensive information, promoting fairness and informed decision-making during the resolution process and preventing disputes over the validity of claims, leading to more efficient and effective resolution of construction defect issues. With respect to construction defect claims, this process allows for quicker resolutions and a more accurate assessment of the damages. This benefits contractors and homeowners by providing a basis for a more precise and effective remedy.

3. Amending the Process and Timeframe re Inspection and Repairs Provides More Certainty: By amending the process and timeframe for inspection and repairs, both contractors and homeowners will have more certainty. Establishing clear guidelines and timelines for inspections and repairs can help prevent delays and disputes, providing all parties involved with a clear understanding of the steps and timeframe for resolution. This increased certainty can lead to a more efficient and timely resolution of construction defect claims.

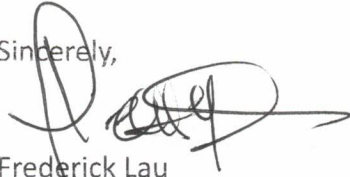
4. Limiting Recovery and Foreclosing Attorney's Fees When Offers are Unreasonably Rejected Ensures Fairness and Efficient Resolution of Claims: Limiting recovery and foreclosing attorney's fees when a proposal to inspect or an offer of repair is unreasonably rejected will result in quicker and fairer resolution of construction defect claims. This provision discourages the rejection of reasonable offers and promotes a more efficient resolution process by preventing unnecessary delays and costly disputes. It also helps to prevent the escalation of legal costs, contributing to a more efficient and cost-effective resolution of construction defect issues.

5. The Amendments will Help Resolve Claims Without Costly and Lengthy Legal Action by Allowing Contractors to Address the Specific Issue Being Raised. The amendments will allow contractors to address the specific issue raised by homeowners. The legislation gives both homeowners and contractors an opportunity to reduce claims without costly and lengthy legal action helping to avoid potentially significant delays to much needed repairs. The amount of construction defect litigation in our state has reached a dire tipping point as evidenced by rising insurance costs, increased housing costs and the unavailability of government backed loans (FHA, VA, USDA, Fannie Mae and Freddie Mac) on condos with litigation, all of which preclude countless 1st time homebuyers from purchasing homes.

In conclusion, the proposed changes to Section 672E-3 and -4 of the Hawaii Revised Statutes represent a thoughtful and balanced approach to more effectively address construction defects in housing and in turn help address Hawaii's housing crisis. These amendments promote early resolution, clarity in communication, and the submission of actual evidence, ultimately benefiting and protecting both homeowners and contractors. I urge you to support and pass this legislation to enhance the fairness and efficiency of the construction defect resolution process in Hawaii and to curb the unnecessary and protracted construction defect litigation that has deepened Hawaii's housing crisis and made housing unattainable for Hawaii's families.

I urge you to lend your support to these amendments.

Sincerely,

A handwritten signature in black ink, appearing to read 'Frederick Lau', with a long horizontal flourish extending to the right.

Frederick Lau
President - Fred Lau Hawaiian Landscape Co. Inc.



February 9, 2024

Senator Jarrett Keohokalole, Chair
Senator Carol Fukunaga, Vice Chair
Members of the Committee on Commerce and Consumer Protection
Thirty-Second Legislature, Regular Session of 2024

RE: **SB 2606 & SB 2607 – RELATING TO CONSTRUCTION**
Hearing Date: Wednesday, February 14, 2024 at 9:30am
Conference Room 229, State Capitol

Aloha Chair Keohokalole, Vice Chair Fukunaga and Members of the Committee,

I wholeheartedly **SUPPORT** HB 2213 – RELATING TO THE CONTRACTOR REPAIR ACT proposing changes to Hawaii's construction defect legislation, particularly the emphasis on specificity in notice of claims that should require actual evidence of the construction defect and discouraging the rejection of reasonable offers. Drawing inspiration from successful models in various states, the amendments promise to bring clarity and efficiency to the claim resolution process. By mandating detailed descriptions of alleged defects and discouraging the rejection of reasonable offers, homeowners and contractors can engage in transparent and productive dialogue, significantly reducing the likelihood of ambiguous or unsubstantiated claims and avoiding potentially significant delays to legitimate needed repairs. This approach aligns with best practices observed in other jurisdictions and is a progressive step toward fostering a constructive and equitable resolution framework in Hawaii. This bill seeks to bring transparency and equality for the homeowner, contractors and homebuyers.

Equally as important, recent construction defect litigation has caused two significant and adverse effects on housing in Hawaii. First, broad and unfounded claims have halted hundreds of new housing units set to begin construction. Second, and more alarming, broad claims have prohibited the ability of 1st time homebuyers to obtain a needed government backed mortgage. Lack of clarity and lack of actual evidence of construction defects in claims has encumbered new condominiums currently under construction. As a result, FHA, VA, Fannie Mae and Freddie Mac have taken the position to disqualify new condominium projects with pending litigation. Without low down payment government backed loan programs and without the 20% down payment

required by portfolio lending, most 1st time homebuyers and veterans are unfairly precluded from purchasing. This has only further exacerbated Hawaii's dire housing crisis.

As a licensed Hawaii contractor for the past 29 years, I stand behind the quality projects we build. These amendments will bring transparency and equality to the process and at the same time protect Hawaii's homeowners. I strongly urge the Committee to support these Hawaii's contractors stand behind the quality projects they build, which these amendments will allow them to equitably do and at the same time protect Hawaii's homeowners.

I strongly urge the Committee to support these amendments for the benefit of homeowners, contractors, homebuyers and the overall efficiency of the construction defect resolution process in our state.

Sincerely,
Foundations Hawaii, Inc.

A handwritten signature in black ink that reads "Kevin Peña". The signature is written in a cursive style with a large initial "K".

Kevin Peña
President



Vinyl Tech & Masonry, Inc

94-009 Waipahu Depot Street • Waipahu, Hawaii 96797 • Phone: (808) 456-5152 • Fax: (808) 456-5153

Email: vinyltechandmasonry@gmail.com • Website: vtmhawaii.com • License #C-20049 / #C-12293

February 09, 2024

Senator Jarrett Keohokalole,
Chair Senator Carol Fukunaga,
Vice Chair Members of the Committee on Commerce and Consumer Protection
Thirty-Second Legislature, Regular Session of 2024

RE: SB 2606 & SB 2607 – RELATING TO CONSTRUCTION
Hearing Date: Wednesday, February 14, 2024, at 9:30am
Conference Room 229, State Capitol

Aloha Chair Keohokalole, Vice Chair Fukunaga, and Members of the Committee,

I am writing to express my strong SUPPORT of SB 2606 & SB 2607 – RELATING TO THE CONTRACTOR REPAIR ACT proposing changes to Section 672E-3 and -4 of the Hawaii Revised Statutes relating to construction defects in housing. The primary reason for my support is the emphasis on protecting both contractors, homeowners and now 1st time homebuyers by requiring specificity in the notice of claim, establishing clear guidelines and timelines for inspections and repairs, and discouraging the rejection of reasonable offers. These protections are pivotal to streamline the claim resolution process and mitigate the unnecessary legal disputes that have aggravated Hawaii's housing crisis and made housing unattainable for Hawaii's families.

Recent construction defect litigation has now impacted 1st time homebuyers' ability to obtain a needed government backed mortgage, further deepening Hawaii's housing crisis. Lack of clarity and actual evidence of construction defect claims have encumbered new condominiums currently under construction. As a result, FHA, VA, Fannie Mae, and Freddie Mac have taken the position to disqualify new condominium projects with pending litigation. Without low down payment government backed loan programs and without the 20% down payment required by portfolio lending, most 1st time homebuyers and veterans are unfairly foreclosed from purchasing.

The legislation's emphasis on detailing the construction defect in the notice of claim with particularity and specificity is a crucial improvement. This requirement ensures that both parties have a clear understanding of the actual issue at hand supporting the core intent of HRS Section 672E. The proposed amendments will also facilitate more effective communication, transparency, and accuracy in the process, thus reducing the likelihood of misunderstandings and frivolous or unsubstantiated claims that have now affected access to critically important FHA, VA, Fannie Mae, and Freddie Mac loan programs. Requiring claimants to provide actual evidence of the construction defect promotes transparency and helps validate construction defect claims. This benefits both contractors and homeowners by providing a basis for a more precise, timely and effective remedy, without litigation. It will also provide a basis upon which mortgage lending on new housing under construction, without legitimate evidence of a construction defect, could continue offering much needed government backed loans.

In conclusion, the proposed changes align with the principles of proactive conflict resolution, promoting a collaborative approach to addressing construction defects in Hawaii. The proposed changes are pivotal to streamline the resolution process and mitigate the deluge of unnecessary legal disputes that have directly affected 1st time homebuyers' and veterans' ability to obtain a low-down payment FHA, VA, Fannie Mae, or Freddie Mac loan and that have only deepened Hawaii's housing crisis and made housing further beyond reach for Hawaii's families.

I urge you to lend your support to these amendments.

Sincerely,



Chris Sokugawa
Vice-President



KY International, Inc.
Architects & Planners

Senator Jarrett Keohokalole, Chair
Senator Carol Fukunaga, Vice Chair
Members of the Committee on Commerce and Consumer Protection
Thirty-Second Legislature, Regular Session of 2024

RE: **SB 2607 – RELATING TO CONSTRUCTION**
Hearing Date: Wednesday, February 14, 2024 at 9:30am
Conference Room 229, State Capitol

Aloha Chair Keohokalole, Vice Chair Fukunaga and Members of the Committee,

I am writing to express my strong **SUPPORT** of SB 2607 -- RELATING TO CONSTRUCTION proposing changes to Section 672E-3 and -4 of the Hawaii Revised Statutes relating to construction defects in housing.

These amendments are crucial for fostering a fair, transparent and efficient process for homeowners as well as contractors in addressing construction defects. These amendments are also critical to curbing unnecessary and protracted lawsuits that have resulted in increased insurance costs on the new construction of much needed housing.

Equally as important, recent construction defect litigation has had an unprecedented effect on 1st time homebuyers' ability to obtain a needed government backed mortgage. This has only further exacerbated Hawaii's housing crisis. Lack of clarity and actual evidence of construction defect claims have encumbered not only completed homes but new condominiums currently under construction as well. As a result, FHA, VA, Fannie Mae and Freddie Mac have taken the position to rescind lending approvals on new condominium projects with pending litigation. Without low down payment government backed loan programs and without the 20% down payment required by portfolio lending, most 1st time homebuyers and veterans are unfairly preempted from purchasing.

1. Specificity in Claim Notices Ensures Clarity: The emphasis on detailing the construction defect in the notice of claim with particularity and specificity is a crucial improvement. This requirement ensures that both parties have a clear understanding of the issues at hand, facilitating more effective communication, transparency and accuracy and reducing the likelihood of misunderstandings and frivolous or unsubstantiated claims. The amendments seek to clarify and strengthen the prelitigation notice requirements consistent with other states that have adopted similar legislation (California, Colorado, Nevada, Florida) to decrease the number of unsubstantiated claims, encourage early resolution of claims, and reduce the cost of housing and insurance. Clear and detailed notice helps contractors pinpoint the alleged issues, enabling them to address the concerns more effectively and efficiently.

2. Evidence Submission Promotes Transparency and Efficient Resolution of Claims: Requiring claimants to provide actual evidence of the construction defect, such as expert reports, photographs, videotapes, and testing results, promotes transparency and helps validate construction defect claims. This provision ensures that contractors have access to comprehensive information, promoting fairness and informed decision-making during the resolution process and preventing disputes over the validity of claims, leading to more efficient and effective resolution of construction defect issues. With respect to construction defect claims, this process allows for quicker resolutions and a more accurate assessment of the damages. This benefits contractors and homeowners by providing a basis for a more precise and effective remedy.

3. Amending the Process and Timeframe re Inspection and Repairs Provides More Certainty: By amending the process and timeframe for inspection and repairs, both contractors and homeowners will have more certainty. Establishing clear guidelines and timelines for inspections and repairs can help prevent delays and disputes, providing all parties involved with a clear understanding of the steps and timeframe for resolution. This increased certainty can lead to a more efficient and timely resolution of construction defect claims.

4. Limiting Recovery and Foreclosing Attorney's Fees When Offers are Unreasonably Rejected Ensures Fairness and Efficient Resolution of Claims: Limiting recovery and foreclosing attorney's fees when a proposal to inspect or an offer of repair is unreasonably rejected will result in quicker and fairer resolution of construction defect claims. This provision discourages the rejection of reasonable offers and promotes a more efficient resolution process by preventing unnecessary delays and costly disputes. It also helps to prevent the escalation of legal costs, contributing to a more efficient and cost-effective resolution of construction defect issues.

5. The Amendments will Help Resolve Claims Without Costly and Lengthy Legal Action by Allowing Contractors to Address the Specific Issue Being Raised. The amendments will allow contractors to address the specific issue raised by homeowners. The legislation gives both homeowners and contractors an opportunity to reduce claims without costly and lengthy legal action helping to avoid potentially significant delays to much needed repairs. The amount of construction defect litigation in our state has reached a dire tipping point as evidenced by rising insurance costs, increased housing costs and the unavailability of government backed loans (FHA, VA, USDA, Fannie Mae and Freddie Mac) on condos with litigation, all of which preclude countless 1st time homebuyers from purchasing homes.

In conclusion, the proposed changes to Section 672E-3 and -4 of the Hawaii Revised Statutes represent a thoughtful and balanced approach to address construction defects more effectively in housing and in turn help address Hawaii's housing crisis. These amendments promote early resolution, clarity in communication, and the submission of actual evidence, ultimately benefiting and protecting both homeowners and contractors. I urge you to support and pass this legislation to enhance the fairness and efficiency of the construction defect resolution process in Hawaii and to curb the unnecessary and protracted construction defect litigation that has deepened Hawaii's housing crisis and made housing unattainable for Hawaii's families.

I urge you to lend your support to these amendments.

Sincerely,



Henry T Y Kwok, AIA
President
KY International, Inc.
Architects & Planners
1100 Alakea Street, Suite 1988
Alakea Corporate Tower
Honolulu, Hawaii 96813
Email: henry@kyinternational.com
Website: www.kyinternational.com
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Cell: 808-282-1628
Fax: 808-599-8881



February 9, 2024

Senator Jarrett Keohokalole, Chair
Senator Carol Fukunaga, Vice Chair
Members of the Committee on Commerce and Consumer Protection
Thirty-Second Legislature, Regular Session of 2024

RE: SB 2606 & SB 2607 – RELATING TO CONSTRUCTION
Hearing Date: Wednesday, February 14, 2024 at 9:30am
Conference Room 229, State Capitol

Aloha Chair Keohokalole, Vice Chair Fukunaga and Members of the Committee,

I wholeheartedly **SUPPORT** SB 2606 & SB 2607 – RELATING TO THE CONTRACTOR REPAIR ACT proposing changes to Hawaii's construction defect legislation, particularly the emphasis on specificity in notice of claims, requiring actual evidence of the construction defect and discouraging the rejection of reasonable offers. Drawing inspiration from successful models in various states, the amendments promise to bring clarity and efficiency to the claim resolution process. By mandating detailed descriptions of alleged defects and discouraging the rejection of reasonable offers, homeowners and contractors can engage in transparent and productive dialogue, significantly reducing the likelihood of ambiguous or unsubstantiated claims and avoiding potentially significant delays to legitimate needed repairs. This approach aligns with best practices observed in other jurisdictions and is a progressive step toward fostering a constructive and equitable resolution framework in Hawaii.

Equally as important, recent construction defect litigation has caused two significant and unprecedented effects on housing in Hawaii. First, broad claims have halted hundreds of new housing units set to begin construction. Second, and more alarming, broad claims have prohibited the ability of 1st time homebuyers to obtain a needed government backed mortgage. Lack of clarity and lack of actual evidence of construction defects in claims has encumbered new condominiums currently under construction. As a result, FHA, VA, Fannie Mae and Freddie Mac have taken the position to disqualify new condominium projects with pending litigation. Without low down payment government backed loan programs and without the 20% down payment required by portfolio lending, most 1st time homebuyers and veterans are unfairly precluded from purchasing. This has only further exacerbated Hawaii's dire housing crisis.



Hawaii's contractors stand behind the quality projects they build, which these amendments will allow them to equitably do and at the same time protect Hawaii's homeowners. I strongly urge the Committee to support these amendments for the benefit of homeowners, contractors, homebuyers and the overall efficiency of the construction defect resolution process in our state.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Kong".

Mark Kong
Maryl Group Construction, Inc. and M2K Construction, LLC

SB-2607

Submitted on: 2/10/2024 7:37:55 AM

Testimony for CPN on 2/14/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Tim Takaezu	Testifying for Foundation Building Materials	Support	Written Testimony Only

Comments:

Dear Senate committee,

I have already have a testimonial on SB2606 in which I also support SB2607.

Thank you for your consideration,

Tim Takaezu



KY International, Inc.
Architects & Planners

Senator Jarrett Keohokalole, Chair
Senator Carol Fukunaga, Vice Chair
Members of the Committee on Commerce and Consumer Protection
Thirty-Second Legislature, Regular Session of 2024

RE: **SB 2607 – RELATING TO CONSTRUCTION**
Hearing Date: Wednesday, February 14, 2024 at 9:30am
Conference Room 229, State Capitol

Aloha Chair Keohokalole, Vice Chair Fukunaga and Members of the Committee,

I am writing to express my strong **SUPPORT** of SB 2607 – RELATING TO CONSTRUCTION proposing changes to Section 672E-3 and -4 of the Hawaii Revised Statutes relating to construction defects in housing.

These amendments are crucial for fostering a fair, transparent and efficient process for homeowners as well as contractors in addressing construction defects. These amendments are also critical to curbing unnecessary and protracted lawsuits that have resulted in increased insurance costs on the new construction of much needed housing.

Equally as important, recent construction defect litigation has had an unprecedented effect on 1st time homebuyers' ability to obtain a needed government backed mortgage. This has only further exacerbated Hawaii's housing crisis. Lack of clarity and actual evidence of construction defect claims have encumbered not only completed homes but new condominiums currently under construction as well. As a result, FHA, VA, Fannie Mae and Freddie Mac have taken the position to rescind lending approvals on new condominium projects with pending litigation. Without low down payment government backed loan programs and without the 20% down payment required by portfolio lending, most 1st time homebuyers and veterans are unfairly preempted from purchasing.

1. Specificity in Claim Notices Ensures Clarity: The emphasis on detailing the construction defect in the notice of claim with particularity and specificity is a crucial improvement. This requirement ensures that both parties have a clear understanding of the issues at hand, facilitating more effective communication, transparency and accuracy and reducing the likelihood of misunderstandings and frivolous or unsubstantiated claims. The amendments seek to clarify and strengthen the prelitigation notice requirements consistent with other states that have adopted similar legislation (California, Colorado, Nevada, Florida) to decrease the number of unsubstantiated claims, encourage early resolution of claims, and reduce the cost of housing and insurance. Clear and detailed notice helps contractors pinpoint the alleged issues, enabling them to address the concerns more effectively and efficiently.

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4. Limiting Recovery and Foreclosing Attorney's Fees When Offers are Unreasonably Rejected Ensures Fairness and Efficient Resolution of Claims: Limiting recovery and foreclosing attorney's fees when a proposal to inspect or an offer of repair is unreasonably rejected will result in quicker and fairer resolution of construction defect claims. This provision discourages the rejection of reasonable offers and promotes a more efficient resolution process by preventing unnecessary delays and costly disputes. It also helps to prevent the escalation of legal costs, contributing to a more efficient and cost-effective resolution of construction defect issues.

5. The Amendments will Help Resolve Claims Without Costly and Lengthy Legal Action by Allowing Contractors to Address the Specific Issue Being Raised. The amendments will allow contractors to address the specific issue raised by homeowners. The legislation gives both homeowners and contractors an opportunity to reduce claims without costly and lengthy legal action helping to avoid potentially significant delays to much needed repairs. The amount of construction defect litigation in our state has reached a dire tipping point as evidenced by rising insurance costs, increased housing costs and the unavailability of government backed loans (FHA, VA, USDA, Fannie Mae and Freddie Mac) on condos with litigation, all of which preclude countless 1st time homebuyers from purchasing homes.

In conclusion, the proposed changes to Section 672E-3 and -4 of the Hawaii Revised Statutes represent a thoughtful and balanced approach to address construction defects more effectively in housing and in turn help address Hawaii's housing crisis. These amendments promote early resolution, clarity in communication, and the submission of actual evidence, ultimately benefiting and protecting both homeowners and contractors. I urge you to support and pass this legislation to enhance the fairness and efficiency of the construction defect resolution process in Hawaii and to curb the unnecessary and protracted construction defect litigation that has deepened Hawaii's housing crisis and made housing unattainable for Hawaii's families.

I urge you to lend your support to these amendments.

Sincerely,



Robert Yoneoka, AIA
Principal
KY International, Inc.
Architects & Planners
1100 Alakea Street, Suite 1988
Alakea Corporate Tower
Honolulu, Hawaii 96813
Email: mail@kyinternational.com
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Fax: 808-599-8881



KY International, Inc.
Architects & Planners

Senator Jarrett Keohokalole, Chair
Senator Carol Fukunaga, Vice Chair
Members of the Committee on Commerce and Consumer Protection
Thirty-Second Legislature, Regular Session of 2024

RE: **SB 2607 – RELATING TO CONSTRUCTION**
Hearing Date: Wednesday, February 14, 2024 at 9:30am
Conference Room 229, State Capitol

Aloha Chair Keohokalole, Vice Chair Fukunaga and Members of the Committee,

I am writing to express my strong **SUPPORT** of SB 2607 -- RELATING TO CONSTRUCTION proposing changes to Section 672E-3 and -4 of the Hawaii Revised Statutes relating to construction defects in housing.

These amendments are crucial for fostering a fair, transparent and efficient process for homeowners as well as contractors in addressing construction defects. These amendments are also critical to curbing unnecessary and protracted lawsuits that have resulted in increased insurance costs on the new construction of much needed housing.

Equally as important, recent construction defect litigation has had an unprecedented effect on 1st time homebuyers' ability to obtain a needed government backed mortgage. This has only further exacerbated Hawaii's housing crisis. Lack of clarity and actual evidence of construction defect claims have encumbered not only completed homes but new condominiums currently under construction as well. As a result, FHA, VA, Fannie Mae and Freddie Mac have taken the position to rescind lending approvals on new condominium projects with pending litigation. Without low down payment government backed loan programs and without the 20% down payment required by portfolio lending, most 1st time homebuyers and veterans are unfairly preempted from purchasing.

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In conclusion, the proposed changes to Section 672E-3 and -4 of the Hawaii Revised Statutes represent a thoughtful and balanced approach to address construction defects more effectively in housing and in turn help address Hawaii's housing crisis. These amendments promote early resolution, clarity in communication, and the submission of actual evidence, ultimately benefiting and protecting both homeowners and contractors. I urge you to support and pass this legislation to enhance the fairness and efficiency of the construction defect resolution process in Hawaii and to curb the unnecessary and protracted construction defect litigation that has deepened Hawaii's housing crisis and made housing unattainable for Hawaii's families.

I urge you to lend your support to these amendments.

Sincerely,



Vivyan H. Lin, AIA
Senior Vice President
KY International, Inc.
Architects & Planners
1100 Alakea Street, Suite 1988
Alakea Corporate Tower
Honolulu, Hawaii 96813
Email: vivyan@kyinternational.com
Website: www.kyinternational.com
Tel: 808-524-1268 ext. 115
Fax: 808-599-8881

SB-2607

Submitted on: 2/11/2024 12:59:09 AM

Testimony for CPN on 2/14/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Nathan Kabei	Testifying for Foundation Building Materials	Support	Written Testimony Only

Comments:

Foundation Building Materials

180 Sand Island Access Road

Honolulu, HI 96819

From: Nathan Kabei

Senator Jarrett Keohokalole, Chair

Senator Carol Fukunaga, Vice Chair

Members of the Committee on Commerce and Consumer Protection

Thirty-Second Legislature, Regular Session of 2024

RE: SB 2606 & SB 2607 – RELATING TO CONSTRUCTION

Hearing Date: Wednesday, February 14, 2024 at 9:30am

Conference Room 229, State Capitol

Aloha Chair Keohokalole, Vice Chair Fukunaga and Members of the Committee,

I am writing to express my strong **SUPPORT** of SB 2606 & SB 2607 – RELATING TO CONSTRUCTION proposing changes to Section 672E-3 and -4 of the Hawaii Revised Statutes relating to construction defects in housing.

These amendments are crucial for fostering a fair, transparent and efficient process for homeowners as well as contractors in addressing construction defects. These amendments are also critical to curbing unnecessary and protracted lawsuits that have resulted in increased insurance costs on the new construction of much needed housing.

Equally as important, recent construction defect litigation has had an unprecedented effect on 1st time homebuyers' ability to obtain a needed government backed mortgage. This has only further exacerbated Hawaii's housing crisis. Lack of clarity and actual evidence of construction defect claims have encumbered not only completed homes but new condominiums currently under construction as well. As a result, FHA, VA, Fannie Mae and Freddie Mac have taken the position to rescind lending approvals on new condominium projects with pending litigation. Without low down payment government backed loan programs and without the 20% down payment required by portfolio lending, most 1st time homebuyers and veterans are unfairly preempted from purchasing.

1. Specificity in Claim Notices Ensures Clarity: The emphasis on detailing the construction defect in the notice of claim with particularity and specificity is a crucial improvement. This requirement ensures that both parties have a clear understanding of the issues at hand, facilitating more effective communication, transparency and accuracy and reducing the likelihood of misunderstandings and frivolous or unsubstantiated claims. The amendments seek to clarify and strengthen the prelitigation notice requirements consistent with other states that have adopted similar legislation (California, Colorado, Nevada, Florida) to decrease the number of unsubstantiated claims, encourage early resolution of claims, and reduce the cost of housing and insurance. Clear and detailed notice helps contractors pinpoint the alleged issues, enabling them to address the concerns more effectively and efficiently.

2. Evidence Submission Promotes Transparency and Efficient Resolution of Claims: Requiring claimants to provide actual evidence of the construction defect, such as expert reports, photographs, videotapes, and testing results, promotes transparency and helps validate construction defect claims. This provision ensures that contractors have access to comprehensive information, promoting fairness and informed decision-making during the resolution process and preventing disputes over the validity of claims, leading to more efficient and effective resolution of construction defect issues. With respect to construction defect claims, this process allows for quicker resolutions and a more accurate assessment of the damages. This

benefits contractors and homeowners by providing a basis for a more precise and effective remedy.

3. Amending the Process and Timeframe re Inspection and Repairs Provides More Certainty: By amending the process and timeframe for inspection and repairs, both contractors and homeowners will have more certainty. Establishing clear guidelines and timelines for inspections and repairs can help prevent delays and disputes, providing all parties involved with a clear understanding of the steps and timeframe for resolution. This increased certainty can lead to a more efficient and timely resolution of construction defect claims.

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5. The Amendments will Help Resolve Claims Without Costly and Lengthy Legal Action by Allowing Contractors to Address the Specific Issue Being Raised. The amendments will allow contractors to address the specific issue raised by homeowners. The legislation gives both homeowners and contractors an opportunity to reduce claims without costly and lengthy legal action helping to avoid potentially significant delays to much needed repairs. The amount of construction defect litigation in our state has reached a dire tipping point as evidenced by rising insurance costs, increased housing costs and the unavailability of government backed loans (FHA, VA, USDA, Fannie Mae and Freddie Mac) on condos with litigation, all of which preclude countless 1st time homebuyers from purchasing homes.

In conclusion, the proposed changes to Section 672E-3 and -4 of the Hawaii Revised Statutes represent a thoughtful and balanced approach to more effectively address construction defects in housing and in turn help address Hawaii's housing crisis. These amendments promote early resolution, clarity in communication, and the submission of actual evidence, ultimately benefiting and protecting both homeowners and contractors. I urge you to support and pass this legislation to enhance the fairness and efficiency of the construction defect resolution process in

Hawaii and to curb the unnecessary and protracted construction defect litigation that has deepened Hawaii's housing crisis and made housing unattainable for Hawaii's families.

I urge you to lend your support to these amendments.

Sincerely,

Nathan Kabei

Outside Sales Representative



New Homes • Renovations • Custom Kitchens & Baths

To the Honorable,
Senator Jarrett Keohokalole, Chair
Senator Carol Fukunaga, Vice Chair
Members of the Committee on Commerce and Consumer Protection

RE: In Regards to SB 2606 & SB 2607 - New Home Construction
Hearing Date: 2-14-2024 at 9:30am
Conference Room 229, State Capitol

Good day Chair Keohokalole, Vice Chair Fukunaga and Members of the Committee,

I want to express my support for House Bill 2213 – In regards to the Contractors Repair Act proposing changes to Hawaii's construction defect legislation, particularly the emphasis on specificity in notice of claims, requiring actual evidence of the construction defect and discouraging the rejection of reasonable offers. Drawing inspiration from successful models in various states, the amendments promise to bring clarity and efficiency to the claim resolution process. By mandating detailed descriptions of alleged defects and discouraging the rejection of reasonable offers, homeowners and contractors can engage in transparent and productive dialogue, significantly reducing the likelihood of ambiguous or unsubstantiated claims and avoiding potentially significant delays to legitimate needed repairs. This approach aligns with best practices observed in other jurisdictions and is a progressive step toward fostering a constructive and equitable resolution framework in Hawaii.

Equally as important, recent construction defect litigation has caused two significant and unprecedented effects on housing in Hawaii. First, broad claims have halted hundreds of new housing units set to begin construction. Second, and more alarming, broad claims have prohibited the ability of **first time homebuyers to obtain a needed government backed mortgage**. Lack of clarity and **lack of actual evidence of construction defects** in claims has encumbered new condominiums currently under construction. As a result, FHA, VA, Fannie Mae and Freddie Mac have taken the position to disqualify new condominium projects with pending litigation. Without low down payment government backed loan programs and without the 20% down payment required by portfolio lending, most 1st time homebuyers and veterans are unfairly precluded from purchasing. This has only further exacerbated Hawaii's dire housing crisis.

Our Company has worked with DR Horton Hawaii, Castle & Cooke Homes as well as many other developers and have never had any major warranty issues. Hawaii's contractors stand behind the quality projects we build with trained Union labor which these amendments will allow us to equitably do and at the same time protect Hawaii's homeowners. I strongly urge the Committee to support these amendments for the benefit of homeowners, contractors, homebuyers and the overall efficiency of the construction defect resolution process in our State.

Sincerely,

Guy Taylor
RME Z Contractors Inc.



Foundation Building Materials

Senator Jarrett Keohokalole, Chair
Senator Carol Fukunaga, Vice Chair
Members of the Committee on Commerce and Consumer Protection
Thirty-Second Legislature, Regular Session of 2024

RE: **SB 2606 & SB 2607 – RELATING TO CONSTRUCTION**
Hearing Date: Wednesday, February 14, 2024 at 9:30am
Conference Room 229, State Capitol

Aloha Chair Keohokalole, Vice Chair Fukunaga and Members of the Committee,

I am writing to express my strong **SUPPORT** of SB 2606 & SB 2607 – RELATING TO CONSTRUCTION proposing changes to Section 672E-3 and -4 of the Hawaii Revised Statutes relating to construction defects in housing.

These amendments are crucial for fostering a fair, transparent and efficient process for homeowners as well as contractors in addressing construction defects. These amendments are also critical to curbing unnecessary and protracted lawsuits that have resulted in increased insurance costs on the new construction of much needed housing.

Equally as important, recent construction defect litigation has had an unprecedented effect on 1st time homebuyers' ability to obtain a needed government backed mortgage. This has only further exacerbated Hawaii's housing crisis. Lack of clarity and actual evidence of construction defect claims have encumbered not only completed homes but new condominiums currently under construction as well. As a result, FHA, VA, Fannie Mae and Freddie Mac have taken the position to rescind lending approvals on new condominium projects with pending litigation. Without low down payment government backed loan programs and without the 20% down payment required by portfolio lending, most 1st time homebuyers and veterans are unfairly preempted from purchasing.

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that have adopted similar legislation (California, Colorado, Nevada, Florida) to decrease the number of unsubstantiated claims, encourage early resolution of claims, and reduce the cost of housing and insurance. Clear and detailed notice helps contractors pinpoint the alleged issues, enabling them to address the concerns more effectively and efficiently.

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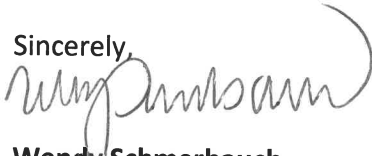
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I urge you to lend your support to these amendments.

Sincerely,

A handwritten signature in black ink, appearing to read "Wendy Schmerbauch", written in a cursive style.

Wendy Schmerbauch
Branch Manager
Foundation Building Materials, LLC



JAYAR CONSTRUCTION, INC.

1176 Sand Island Parkway ▼ Honolulu, Hawaii 96819
Tel (808) 843-0500 ▼ Fax (808) 843-0067
Contractor's License ABC-14156

Senator Jarrett Keohokalole, Chair
Senator Carol Fukunaga, Vice Chair
Members of the Committee on Commerce and Consumer Protection
Thirty-Second Legislature, Regular Session of 2024

RE: **SB 2606 & SB 2607 – RELATING TO CONSTRUCTION**
Hearing Date: Wednesday, February 14, 2024 at 9:30am
Conference Room 229, State Capitol

Aloha Chair Keohokalole, Vice Chair Fukunaga and Members of the Committee,

I am writing to express my strong **SUPPORT** of SB 2606 & SB 2607 – RELATING TO CONSTRUCTION proposing changes to Section 672E-3 and -4 of the Hawaii Revised Statutes relating to construction defects in housing.

These amendments are crucial for fostering a fair, transparent and efficient process for homeowners as well as contractors in addressing construction defects. These amendments are also critical to curbing unnecessary and protracted lawsuits that have resulted in increased insurance costs on the new construction of much needed housing.

Equally as important, recent construction defect litigation has had an unprecedented effect on 1st time homebuyers' ability to obtain a needed government backed mortgage. This has only further exacerbated Hawaii's housing crisis. Lack of clarity and actual evidence of construction defect claims have encumbered not only completed homes but new condominiums currently under construction as well. As a result, FHA, VA, Fannie Mae and Freddie Mac have taken the position to rescind lending approvals on new condominium projects with pending litigation. Without low down payment government backed loan programs and without the 20% down payment required by portfolio lending, most 1st time homebuyers and veterans are unfairly preempted from purchasing.

1. Specificity in Claim Notices Ensures Clarity: The emphasis on detailing the construction defect in the notice of claim with particularity and specificity is a crucial improvement. This requirement ensures that both parties have a clear understanding of the issues at hand, facilitating more effective communication, transparency and accuracy and reducing the likelihood of misunderstandings and frivolous or unsubstantiated claims. The amendments seek to clarify and strengthen the prelitigation notice requirements consistent with other states that have adopted similar legislation (California, Colorado, Nevada, Florida) to decrease the number of unsubstantiated claims, encourage early resolution of claims, and reduce the cost of housing and insurance. Clear and detailed notice helps contractors pinpoint the alleged issues, enabling them to address the concerns more effectively and efficiently.

2. Evidence Submission Promotes Transparency and Efficient Resolution of Claims: Requiring claimants to provide actual evidence of the construction defect, such as expert reports, photographs, videotapes, and testing results, promotes transparency and helps validate construction defect claims. This provision ensures that contractors have access to comprehensive information, promoting fairness and informed decision-making during the resolution process and preventing disputes over the validity of claims, leading to more efficient and effective resolution of construction defect issues. With respect to construction defect claims, this process allows for quicker resolutions and a more accurate assessment of the damages. This benefits contractors and homeowners by providing a basis for a more precise and effective remedy.

3. Amending the Process and Timeframe re Inspection and Repairs Provides More Certainty: By amending the process and timeframe for inspection and repairs, both contractors and homeowners will have more certainty. Establishing clear guidelines and timelines for inspections and repairs can help prevent delays and disputes, providing all parties involved with a clear understanding of the steps and timeframe for resolution. This increased certainty can lead to a more efficient and timely resolution of construction defect claims.

4. Limiting Recovery and Foreclosing Attorney's Fees When Offers are Unreasonably Rejected Ensures Fairness and Efficient Resolution of Claims: Limiting recovery and foreclosing attorney's fees when a proposal to inspect or an offer of repair is unreasonably rejected will result in quicker and fairer resolution of construction defect claims. This provision discourages the rejection of reasonable offers and promotes a more efficient resolution process by preventing unnecessary delays and costly disputes. It also helps to prevent the escalation of legal costs, contributing to a more efficient and cost-effective resolution of construction defect issues.

5. The Amendments will Help Resolve Claims Without Costly and Lengthy Legal Action by Allowing Contractors to Address the Specific Issue Being Raised. The amendments will allow contractors to address the specific issue raised by homeowners. The legislation gives both homeowners and contractors an opportunity to reduce claims without costly and lengthy legal action helping to avoid potentially significant delays to much needed repairs. The amount of construction defect litigation in our state has reached a dire tipping point as evidenced by rising insurance costs, increased housing costs and the unavailability of government backed loans (FHA, VA, USDA, Fannie Mae and Freddie Mac) on condos with litigation, all of which preclude countless 1st time homebuyers from purchasing homes.

In conclusion, the proposed changes to Section 672E-3 and -4 of the Hawaii Revised Statutes represent a thoughtful and balanced approach to more effectively address construction defects in housing and in turn help address Hawaii's housing crisis. These amendments promote early resolution, clarity in communication, and the submission of actual evidence, ultimately benefiting and protecting both homeowners and contractors. I urge you to support and pass this legislation to enhance the fairness and efficiency of the construction defect resolution

process in Hawaii and to curb the unnecessary and protracted construction defect litigation that has deepened Hawaii's housing crisis and made housing unattainable for Hawaii's families.

I urge you to lend your support to these amendments.

Sincerely,

A handwritten signature in black ink, appearing to read 'Aaron M. Yahiku', written in a cursive style.

Aaron M. Yahiku, P.E.
President



February 14, 2024

Committee: Senate Committee on Commerce and Consumer Protection
Bill Number: SB 2607 Relating to Construction
Hearing Date and Time: February 14, 2024, 9:30am
Re: Testimony of HPM Building Supply in Support

Aloha Chair Keohokalole, Vice Chair Fukunaga and members of the Committee,

We write in strong support of SB 2607. This bill is an important step towards creating a fair, transparent, and efficient process for homeowners as well as contractors in addressing construction defects. These amendments are also critical to curbing unnecessary and protracted lawsuits that have resulted in increased insurance costs on the new construction of much needed housing.

HPM Building Supply is a 100% employee-owned company serving Hawaii's home improvement market and building industry for over 100 years since 1921. With 18 locations across Hawaii and Washington State, HPM offers various services and products, including retail stores, building supply and lumber yards, home design centers, drafting and design services, and manufacturing facilities. HPM is dedicated to enhancing homes, improving lives, and transforming communities one home at a time.

As a building material and home plan supplier to both homeowners and contractors alike, this bill has direct impact on the communities we serve. Recent construction defect litigation has now impacted 1st time homebuyers' ability to obtain government backed mortgages, furthering Hawaii's already urgent housing crisis. Lack of clarity and actual evidence of construction defect claims have encumbered new condominiums currently under construction. As a result, FHA, VA, Fannie Mae and Freddie Mac have taken the position to disqualify new condominium projects with pending litigation. This situation is also being applied to production home builders who are building turn-key communities. Without low down payment government backed loan programs and without the 20% down payment required by portfolio lending, most 1st time homebuyers and veterans are unfairly foreclosed from purchasing.

Home production has already halted with 800 homes/condos in litigation across the State. The lawsuits are also **increasing the cost of construction** with increased insurance costs, required underwriting of legal costs and award/settlement risk, and redesigns of structures. Estimates on costs are as follows:

- Increase in insurance, \$1,500/unit
- Increase in design/construction
 - Significant increase in cost to construct home
 - Additional \$93-\$133/mo in mortgage payment at a 7% interest rate
 - Additional \$282 to \$403/mo in household income required.

Hawaii's contractors stand behind the quality projects they build, which these amendments will allow them to equitably do and at the same time protect Hawaii's homeowners. We need housing to continue in Hawaii and not to be further stymied by court cases or unnecessary legal claims.

Mahalo for the opportunity to submit testimony in support of SB 2607. I strongly urge the Committee to support these amendments for the benefit of homeowners, contractors, homebuyers and the overall efficiency of the construction defect resolution process in our state.

Sincerely,

Dennis Lin
Community Relations Administrator





91-295 Kauhi Street
Kapolei, Hawaii 96707
TEL. (808) 682-0307 FAX (808) 682-0635

Senator Jarrett Keohokalole, Chair
Senator Carol Fukunaga, Vice Chair
Members of the Committee on Commerce and Consumer Protection
Thirty-Second Legislature, Regular Session of 2024

RE: **SB 2606 & SB 2607 – RELATING TO CONSTRUCTION**
Hearing Date: Wednesday, February 14, 2024 at 9:30am
Conference Room 229, State Capitol

Aloha Chair Keohokalole, Vice Chair Fukunaga and Members of the Committee,

I am writing to express my strong **SUPPORT** of SB 2606 & SB 2607 – RELATING TO CONSTRUCTION proposing changes to Section 672E-3 and -4 of the Hawaii Revised Statutes relating to construction defects in housing.

These amendments are crucial for fostering a fair, transparent and efficient process for homeowners as well as contractors in addressing construction defects. These amendments are also critical to curbing unnecessary and protracted lawsuits that have resulted in increased insurance costs on the new construction of much needed housing.

Equally as important, recent construction defect litigation has had an unprecedented effect on 1st time homebuyers' ability to obtain a needed government backed mortgage. This has only further exacerbated Hawaii's housing crisis. Lack of clarity and actual evidence of construction defect claims have encumbered not only completed homes but new condominiums currently under construction as well. As a result, FHA, VA, Fannie Mae and Freddie Mac have taken the position to rescind lending approvals on new condominium projects with pending litigation. Without low down payment government backed loan programs and without the 20% down payment required by portfolio lending, most 1st time homebuyers and veterans are unfairly preempted from purchasing.

1. Specificity in Claim Notices Ensures Clarity: The emphasis on detailing the construction defect in the notice of claim with particularity and specificity is a crucial improvement. This requirement ensures that both parties have a clear understanding of the issues at hand,

facilitating more effective communication, transparency and accuracy and reducing the likelihood of misunderstandings and frivolous or unsubstantiated claims. The amendments seek to clarify and strengthen the prelitigation notice requirements consistent with other states that have adopted similar legislation (California, Colorado, Nevada, Florida) to decrease the number of unsubstantiated claims, encourage early resolution of claims, and reduce the cost of housing and insurance. Clear and detailed notice helps contractors pinpoint the alleged issues, enabling them to address the concerns more effectively and efficiently.

2. Evidence Submission Promotes Transparency and Efficient Resolution of Claims: Requiring claimants to provide actual evidence of the construction defect, such as expert reports, photographs, videotapes, and testing results, promotes transparency and helps validate construction defect claims. This provision ensures that contractors have access to comprehensive information, promoting fairness and informed decision-making during the resolution process and preventing disputes over the validity of claims, leading to more efficient and effective resolution of construction defect issues. With respect to construction defect claims, this process allows for quicker resolutions and a more accurate assessment of the damages. This benefits contractors and homeowners by providing a basis for a more precise and effective remedy.

3. Amending the Process and Timeframe re Inspection and Repairs Provides More Certainty: By amending the process and timeframe for inspection and repairs, both contractors and homeowners will have more certainty. Establishing clear guidelines and timelines for inspections and repairs can help prevent delays and disputes, providing all parties involved with a clear understanding of the steps and timeframe for resolution. This increased certainty can lead to a more efficient and timely resolution of construction defect claims.

4. Limiting Recovery and Foreclosing Attorney's Fees When Offers are Unreasonably Rejected Ensures Fairness and Efficient Resolution of Claims: Limiting recovery and foreclosing attorney's fees when a proposal to inspect or an offer of repair is unreasonably rejected will result in quicker and fairer resolution of construction defect claims. This provision discourages the rejection of reasonable offers and promotes a more efficient resolution process by preventing unnecessary delays and costly disputes. It also helps to prevent the escalation of legal costs, contributing to a more efficient and cost-effective resolution of construction defect issues.

5. The Amendments will Help Resolve Claims Without Costly and Lengthy Legal Action by Allowing Contractors to Address the Specific Issue Being Raised. The amendments will allow contractors to address the specific issue raised by homeowners. The legislation gives both homeowners and contractors an opportunity to reduce claims without costly and lengthy legal action helping to avoid potentially significant delays to much needed repairs. The amount of construction defect litigation in our state has reached a dire tipping point as evidenced by rising insurance costs, increased housing costs and the unavailability of government backed loans (FHA, VA, USDA, Fannie Mae and Freddie Mac) on condos with litigation, all of which preclude countless 1st time homebuyers from purchasing homes.

In conclusion, the proposed changes to Section 672E-3 and -4 of the Hawaii Revised Statutes represent a thoughtful and balanced approach to more effectively address construction defects in housing and in turn help address Hawaii's housing crisis. These amendments promote early resolution, clarity in communication, and the submission of actual evidence, ultimately benefiting and protecting both homeowners and contractors. I urge you to support and pass this legislation to enhance the fairness and efficiency of the construction defect resolution process in Hawaii and to curb the unnecessary and protracted construction defect litigation that has deepened Hawaii's housing crisis and made housing unattainable for Hawaii's families.

I urge you to lend your support to these amendments.

Sincerely,

A handwritten signature in cursive script that reads "Charles Dickey".

Charles Dickey

President

Tru-Door Hawaii, Inc.

REEF Development of Hawaii, Inc.

February 9, 2024

Senator Jarrett Keohokalole, Chair
Senator Carol Fukunaga, Vice Chair
Members of the Committee on Commerce and Consumer Protection
Thirty-Second Legislature, Regular Session of 2024

P.O. BOX 1055
AIEA, HAWAII 96701
99-930 IWAENA STREET #107B
TELEPHONE: (808) 488-1228
LIC# ABC-4791

RE: **SB 2606 & SB 2607 – RELATING TO CONSTRUCTION**
Hearing Date: Wednesday, February 14, 2024 at 9:30am
Conference Room 229, State Capitol

Aloha Chair Keohokalole, Vice Chair Fukunaga and Members of the Committee,

I am writing to express my strong **SUPPORT** of SB 2606 & SB 2607 – RELATING TO THE CONTRACTOR REPAIR ACT proposing changes to Section 672E-3 and -4 of the Hawaii Revised Statutes relating to construction defects in housing. The primary reason for my support is the emphasis on protecting both contractors, homeowners and now 1st time homebuyers by requiring specificity in the notice of claim, establishing clear guidelines and timelines for inspections and repairs and discouraging the rejection of reasonable offers. These protections are pivotal to streamline the claim resolution process and mitigate the unnecessary legal disputes that have aggravated Hawaii's housing crisis and made housing unattainable for Hawaii's families.

Recent construction defect litigation has now impacted 1st time homebuyers' ability to obtain a needed government backed mortgage, further deepening Hawaii's housing crisis. Lack of clarity and actual evidence of construction defect claims have encumbered new condominiums currently under construction. As a result, FHA, VA, Fannie Mae and Freddie Mac have taken the position to disqualify new condominium projects with pending litigation. Without low down payment government backed loan programs and without the 20% down payment required by portfolio lending, most 1st time homebuyers and veterans are unfairly foreclosed from purchasing.

The legislation's emphasis on detailing the construction defect in the notice of claim with particularity and specificity is a crucial improvement. This requirement ensures that both parties have a clear understanding of the actual issue at hand supporting the core intent of HRS Section 672E. The proposed amendments will also facilitate more effective communication, transparency and accuracy in the process, thus reducing the likelihood of misunderstandings and frivolous or unsubstantiated claims that have now affected access to critically important FHA, VA, Fannie Mae and Freddie Mac loan programs. Requiring claimants to provide actual evidence of the construction defect promotes transparency and helps validate construction defect claims. This benefits both contractors and homeowners by providing a basis for a more precise, timely and effective remedy, without litigation. It will also provide a basis upon which

REEF Development of Hawaii, Inc.

P.O. BOX 1055
AIEA, HAWAII 96701
99-930 IWAENA STREET #107B
TELEPHONE: (808) 488-1228
LIC# ABC-4791

mortgage lending on new housing under construction, without legitimate evidence of a construction defect, could continue offering much needed government backed loans.

In conclusion, the proposed changes align with the principles of proactive conflict resolution, promoting a collaborative approach to addressing construction defects in Hawaii. The proposed changes are pivotal to streamline the resolution process and mitigate the deluge of unnecessary legal disputes that have directly affected 1st time homebuyers' and veterans' ability to obtain a low down payment FHA, VA, Fannie Mae or Freddie Mac loan and that have only deepened Hawaii's housing crisis and made housing further beyond reach for Hawaii's families.

I urge you to lend your support to these amendments.

Sincerely,



SAMUEL S. AGUIRRE
PRESIDENT



HAWAII LABORERS-EMPLOYERS COOPERATION AND EDUCATION TRUST

650 Iwilei Road, Suite 285 · Honolulu, HI 96817 · Phone: 808-845-3238 · Fax: 808-845-8300

THE SENATE
THE THIRTY-SECOND LEGISLATURE
REGULAR SESSION OF 2024

COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Senator Jarrett Keohokalole, Chair
Senator Carol Fukunaga, Vice Chair

NOTICE OF HEARING

DATE: Wednesday, February 14, 2024
TIME: 9:30 a.m.
PLACE: Conference Room 229
State Capitol
415 South Beretania Street

TESTIMONY ON SB2607

TO THE HONORABLE CHAIR JARRETT KEOHOKALOOLE, VICE CHAIR CAROL FUKUNAGA AND MEMBERS OF THE SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION:

Hawaii LECET is a labor-management partnership between the Hawaii Laborers' International Union of North America, Local 368, its 5000+ members and its 250+ unionized contractors. The Laborers' International Union of North America is the largest international construction trade union in the United States and Canada.

Mahalo for the opportunity to testify in support of SB2607, Relating to Construction, which adds requirements to the claims process for construction defects. These additional requirements, which include providing better notice, evidence, and details of the alleged defect, requiring a specific timeline for inspection, and limiting recovery to the cost of mitigating the defect and attorney's fees when a proposal to inspect an offer to repair is unreasonably rejected, will ensure that the process is clear, uniform and fair for both parties. These new requirements will help prevent frivolous or deceptive claims and lawsuits, which drive up the cost of construction. Thank you for your consideration.

With Respect,

Hawaii Laborers-Employers Cooperation and Education Trust



HAWAIIANA

Hawaiiana Management Company, Ltd.
Pacific Park Plaza, Suite 700
711 Kapiolani Boulevard
Honolulu, Hawaii 96813
Tel: (808) 593-9100
Fax: (808) 593-6333

February 12, 2024

Senator Jarrett Keohokalole, Chair
Senator Carol Fukunaga, Vice Chair
Members of the Committee on Commerce and Consumer Protection
Thirty-Second Legislature, Regular Session of 2024

RE: **SB 2606 & SB 2607 – RELATING TO CONSTRUCTION**
Hearing Date: Wednesday, February 14, 2024 at 9:30am
Conference Room 229, State Capitol

Aloha Chair Keohokalole, Vice Chair Fukunaga and Members of the Committee,

I am writing to express my strong **SUPPORT** of SB 2606 & SB 2607 – RELATING TO THE CONTRACTOR REPAIR ACT proposing changes to Section 672E-3 and -4 of the Hawaii Revised Statutes relating to construction defects in housing. The primary reason for my support is the emphasis on protecting both contractors, homeowners and now 1st time homebuyers by requiring specificity in the notice of claim, establishing clear guidelines and timelines for inspections and repairs and discouraging the rejection of reasonable offers. These protections are pivotal to streamline the claim resolution process and mitigate the unnecessary legal disputes that have aggravated Hawaii's housing crisis and made housing unattainable for Hawaii's families.

Recent construction defect litigation has now impacted 1st time homebuyers' ability to obtain a needed government backed mortgage, further deepening Hawaii's housing crisis. Lack of clarity and actual evidence of construction defect claims have encumbered new condominiums currently under construction. As a result, FHA, VA, Fannie Mae and Freddie Mac have taken the position to disqualify new condominium projects with pending litigation. Without low down payment government backed loan programs and without the 20% down payment required by portfolio lending, most 1st time homebuyers and veterans are unfairly foreclosed from purchasing.

The legislation's emphasis on detailing the construction defect in the notice of claim with particularity and specificity is a crucial improvement. This requirement ensures that both parties have a clear understanding of the actual issue at hand supporting the core intent of HRS Section 672E. The proposed amendments will also facilitate more effective communication, transparency and accuracy in the process, thus reducing the likelihood of misunderstandings and frivolous or unsubstantiated claims that have now affected access to critically important FHA, VA, Fannie Mae and Freddie Mac loan programs. Requiring claimants to provide actual evidence of the

construction defect promotes transparency and helps validate construction defect claims. This benefits both contractors and homeowners by providing a basis for a more precise, timely and effective remedy, without litigation. It will also provide a basis upon which mortgage lending on new housing under construction, without legitimate evidence of a construction defect, could continue offering much needed government backed loans.

In conclusion, the proposed changes align with the principles of proactive conflict resolution, promoting a collaborative approach to addressing construction defects in Hawaii. The proposed changes are pivotal to streamline the resolution process and mitigate the deluge of unnecessary legal disputes that have directly affected 1st time homebuyers' and veterans' ability to obtain a low down payment FHA, VA, Fannie Mae or Freddie Mac loan and that have only deepened Hawaii's housing crisis and made housing further beyond reach for Hawaii's families.

I urge you to lend your support to these amendments.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jon McKenna". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Jon McKenna
President



Hawaiiana Management Company, Ltd.
Pacific Park Plaza, Suite 700
711 Kapiolani Boulevard
Honolulu, Hawaii 96813
Tel: (808) 593-6835
Fax: (808) 447-5195
Email: jfic@hmcmgt.com
Internet: www.hmcmgt.com

February 9, 2024

Senator Jarrett Keohokalole, Chair
Senator Carol Fukunaga, Vice Chair
Members of the Committee on Commerce and Consumer Protection
Thirty-Second Legislature, Regular Session of 2024

RE: SB 2606 & SB 2607 – RELATING TO CONSTRUCTION
Hearing Date: Wednesday, February 14, 2024 at 9:30am
Conference Room 229, State Capitol

Aloha Chair Keohokalole, Vice Chair Fukunaga and Members of the Committee,

I am writing to express my strong SUPPORT of SB 2606 & SB 2607 – RELATING TO THE CONTRACTOR REPAIR ACT proposing changes to Section 672E-3 and -4 of the Hawaii Revised Statutes relating to construction defects in housing. The primary reason for my support is the emphasis on protecting both contractors, homeowners and now 1st time homebuyers by requiring specificity in the notice of claim, establishing clear guidelines and timelines for inspections and repairs and discouraging the rejection of reasonable offers. These protections are pivotal to streamline the claim resolution process and mitigate the unnecessary legal disputes that have aggravated Hawaii's housing crisis and made housing unattainable for Hawaii's families.

Recent construction defect litigation has now impacted 1st time homebuyers' ability to obtain a needed government backed mortgage, further deepening Hawaii's housing crisis. Lack of clarity and actual evidence of construction defect claims have encumbered new condominiums currently under construction. As a result, FHA, VA, Fannie Mae and Freddie Mac have taken the position to disqualify new condominium projects with pending litigation. Without low down payment government backed loan programs and without the 20% down payment required by portfolio lending, most 1st time homebuyers and veterans are unfairly foreclosed from purchasing.

The legislation's emphasis on detailing the construction defect in the notice of claim with particularity and specificity is a crucial improvement. This requirement ensures that both parties have a clear understanding of the actual issue at hand supporting the core intent of HRS Section 672E. The proposed

amendments will also facilitate more effective communication, transparency and accuracy in the process, thus reducing the likelihood of misunderstandings and frivolous or unsubstantiated claims that have now affected access to critically important FHA, VA, Fannie Mae and Freddie Mac loan programs. Requiring claimants to provide actual evidence of the construction defect promotes transparency and helps validate construction defect claims. This benefits both contractors and homeowners by providing a basis for a more precise, timely and effective remedy, without litigation. It will also provide a basis upon which mortgage lending on new housing under construction, without legitimate evidence of a construction defect, could continue offering much needed government backed loans.

In conclusion, the proposed changes align with the principles of proactive conflict resolution, promoting a collaborative approach to addressing construction defects in Hawaii. The proposed changes are pivotal to streamline the resolution process and mitigate the deluge of unnecessary legal disputes that have directly affected 1st time homebuyers' and veterans' ability to obtain a low down payment FHA, VA, Fannie Mae or Freddie Mac loan and that have only deepened Hawaii's housing crisis and made housing further beyond reach for Hawaii's families.

I urge you to lend your support to these amendments.

Sincerely,



Justyna Fic
Director of New Development Activities

LATE

LATE

SB-2607

Submitted on: 2/13/2024 8:24:48 PM

Testimony for CPN on 2/14/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Nathaniel Kinney	Testifying for Hawaii Regional Council of Carpenters	Support	In Person

Comments:

HRCC is in support of this measure as it will help bring clarity and stability to the housing market. Overly broad construction defect claims are constraining the production of housing and we believe that this bill would continue to protect consumers while allowing for contractors to repair any defective construction that may have occurred

SB 2607

OPPOSE

Senate Committee on Commerce and Consumer Protection

Aloha Chairman Keohokalole and senators

My name is Nadine Nagano. My husband Keith and I live in a subdivision in Kapolei. We oppose this bill.

We are currently involved in a construction defects lawsuit because we want our home to be fixed, safe and secure.

SB 2607 forces homeowners to literally pay for the construction mistakes made by the contractor or developer.

This bill places a heavy burden on the backs of ordinary homeowners like us who are trying to protect our family's right to live in a safe and secure home. We are grandparents and during the week our grandchildren are at our home. We do not want their welfare to be at risk.

This bill is about fear, intimidation and favoritism for corporations/businesses who are the giants or Goliaths in the building industry.

- 1) It forces a homeowner to accept the initial offer the builder or contractor makes. It says I "shall" accept.
- 2) And if I refuse the offer, I'm penalized. It says I cannot recover a dollar amount that exceeds the contractor's offer that I rejected.
- 3) And yet, even if I win my case in court, I am not entitled to get fees to pay my attorneys. Moreover, I will have to pay the attorney's fees and costs for the developer or contractor who lost the case. This is just a naked attempt to stop or discourage homeowners from having their homes fixed by having them pay for everything.

When I purchased my home, I did not expect the integrity of my home to be compromised before its 10th "birthday". This was the biggest investment we made.

Please do not make it impossible for me and my family to make sure we live in a safe and secure home. Please kill this bill.



Rusted sill track and anchor screw



Corroding sill track



Rusted sill tracks

Rusted anchor screw that snapped off

Senator Jarrett Keohokalole, Chair
Senator Carol Fukunaga, Vice Chair
Members of the Senate Committee on Commerce and Consumer Protection
Thirty-Second Legislature, Regular Session of 2024

Re: SB 2607- RELATING TO CONSTRUCTION
Testimony of Kun Fang Opposing HB 2607
Homeowner at Kapiolani Residence, 1631 Kapiolani Blvd., Honolulu, HI 96826

Chair Keohokalole, Vice Chair Fukunaga, and members of committee,

I **OPPOSE** HB 2607 – RELATING TO CONSTRUCTION, which proposes amendments to the Contractor Repair Act under Hawai'i Revised Statute § 672E, which would force homeowners and Associations to accept any offer made by the developer or contractor to settle claims for construction defect, prevent homeowners and Associations from being awarded more than the contractor's offer, and threaten homeowners and Associations by requiring them to pay for developer's and contractor's attorney's fees if they reject the offer, even if the homeowner or Association ultimately prevails in court.

I am a unit owner at the condominium project Kapiolani Residence at 1631 Kapiolani Blvd. in Honolulu, Hawaii. Our Association has gone through the Contractor Repair Act and filed a lawsuit against the developer and general contractor of the condo for multiple defects identified in the building. There are numerous defects in the building, and many that affect me personally.

Since I purchased the home in 2016, I have had numerous problems with my unit due to construction defects. There are sewer gases that come out of our plumbing system, which are a health hazard and cause our house to smell like rotten eggs.

The plumbing drain lines in the building were not built properly, and have become clogged with rust which cause constant laundry machine backups. Our Association has had to replace my drain lines on multiple occasions, but the defect still exists. Below is a photo of the plumbing lines taken from my units which have become completely clogged with rust:





We also live in constant fear of a leak in the plumbing supply line, which would be a costly fix. I understand that the building has had over 100 leaks from defective plumbing lines leading to numerous costly repairs for both the plumbing and water damage.

Because of the numerous defects affecting my unit, I was not able to live in my unit for more than two years. I have moved back part time, but still am not able to use my laundry machine because of the construction defect issues.

However, the Association is able to pursue adequate compensation for these defects, and numerous other defects in the building because the Contractor Repair Act allows the Association to assess whether any offer made during the Contractor Repair Act is reasonable and has the choice to accept the offer or pursue litigation.

SB 2607 would amend the Contractor Repair Act to force homeowners and Associations to accept any offer made during the Contractor Repair Act process, no matter how low the offer is.

The bill would punish homeowners who reject an offer. If a claimant “unreasonably rejects” the developer’s or contractor’s offer, (1) the claimant cannot recover any amount that exceeds the total value of the offer, (2) is denied attorney’s fees and costs, even if the claimant is the prevailing party, and (3) would be required to pay attorney’s fees and costs even if the claimant is the prevailing party. There is no explanation on what is “unreasonable” and the attorney’s fees provision is a one-way street: only the contractor or developer can recover attorney’s fees even if they ultimately are found liable for the construction defects.

The proposed amendments creates a way for the contractor to bully homeowners and associations into accepting their offer.

If the amendments in this bill applied to Kapiolani Residence, the contractor or developer could have forced the Association to accept a deficient offer or face having to pay for its attorney’s fees.

I, therefore, ask this committee to strongly consider the rights of homeowners and Associations, and stop this bill from moving forward in the Senate.

Thank you for your consideration.

2/9/2024

Senator Jarrett Keohokalole, Chair
Senator Carol Fukunaga, Vice Chair
Members of the Committee on Commerce and Consumer Protection
Thirty-Second Legislature, Regular Session of 2024

RE: SB 2606 & SB 2607 – RELATING TO CONSTRUCTION
Hearing Date: Wednesday, February 14, 2024 at 9:30am
Conference Room 229, State Capitol

Aloha Chair Keohokalole, Vice Chair Fukunaga and Members of the Committee,

I wholeheartedly **SUPPORT** SB 2606 & SB 2607 – RELATING TO THE CONTRACTOR REPAIR ACT proposing changes to Hawaii's construction defect legislation, particularly the emphasis on specificity in notice of claims, requiring actual evidence of the construction defect and discouraging the rejection of reasonable offers. Drawing inspiration from successful models in various states, the amendments promise to bring clarity and efficiency to the claim resolution process. By mandating detailed descriptions of alleged defects and discouraging the rejection of reasonable offers, homeowners and contractors can engage in transparent and productive dialogue, significantly reducing the likelihood of ambiguous or unsubstantiated claims and avoiding potentially significant delays to legitimate needed repairs. This approach aligns with best practices observed in other jurisdictions and is a progressive step toward fostering a constructive and equitable resolution framework in Hawaii.

Equally as important, recent construction defect litigation has caused two significant and unprecedented effects on housing in Hawaii. First, broad claims have halted hundreds of new housing units set to begin construction. Second, and more alarming, broad claims have prohibited the ability of 1st time homebuyers to obtain a needed government backed mortgage. Lack of clarity and lack of actual evidence of construction defects in claims has encumbered new condominiums currently under construction. As a result, FHA, VA, Fannie Mae and Freddie Mac have taken the position to disqualify new condominium projects with pending litigation. Without low down payment government backed loan programs and without the 20% down payment required by portfolio lending, most 1st time homebuyers and veterans are unfairly precluded from purchasing. This has only further exacerbated Hawaii's dire housing crisis.

Hawaii's contractors stand behind the quality projects they build, which these amendments will allow them to equitably do and at the same time protect Hawaii's homeowners. I strongly urge

the Committee to support these amendments for the benefit of homeowners, contractors, homebuyers and the overall efficiency of the construction defect resolution process in our state.

Sincerely,

Thomas Chernin

Working for homeowners

Manuel Johann Shelley – Homeowner in Haloa, Ho’opili

Dear Chair Keohokalole, Vice Chair Fukunaga and Members of the Committee,

I am writing to express my strong SUPPORT of SB 2606 and SB 2607 – RELATING TO THE CONTRACTOR REPAIR ACT proposing changes to Section 672E-3 and -4 of the Hawaii Revised Statutes relating to construction defects in housing. The primary reason for my support is the emphasis on protecting both contractors, homeowners and now 1st time homebuyers by requiring specificity in the notice of claim, establishing clear guidelines and timelines for inspections and repairs and discouraging the rejection of reasonable offers. These protections are pivotal to streamline the claim resolution process and mitigate the unnecessary legal disputes that have aggravated Hawaii’s housing crisis and made housing unattainable for Hawaii’s families.

Recent construction defect litigation has now impacted 1st time homebuyers’ ability to obtain a needed government backed mortgage, further deepening Hawaii’s housing crisis. Lack of clarity and actual evidence of construction defect claims have encumbered new condominiums currently under construction. As a result, FHA, VA, Fannie Mae and Freddie Mac have taken the position to disqualify new condominium projects with pending litigation. Without low down payment government backed loan programs and without the 20% down payment required by portfolio lending, most 1st time homebuyers and veterans are unfairly foreclosed from purchasing. The legislation’s emphasis on detailing the construction defect in the notice of claim with particularity and specificity is a crucial improvement. This requirement ensures that both parties have a clear understanding of the actual issue at hand supporting the core intent of HRS Section 672E. The proposed amendments will also facilitate more effective communication, transparency and accuracy in the process, thus reducing the likelihood of misunderstandings, and frivolous or unsubstantiated claims that have now affected access to critically important FHA, VA, Fannie Mae and Freddie Mac loan programs. Requiring claimants to provide actual evidence of the construction defect promotes transparency and helps validate construction defect claims. This benefits both contractors and homeowners by providing a basis for a more precise, timely and effective remedy, without litigation. It will also provide a basis upon which mortgage lending on new housing under construction, without legitimate evidence of a construction defect, could continue offering much needed government backed loans. In conclusion, the proposed changes align with the principles of proactive conflict resolution, promoting a collaborative approach to addressing construction defects in Hawaii. The proposed changes are pivotal to streamline the resolution process and mitigate the deluge of unnecessary legal disputes that have directly affected 1st time homebuyers’ and veterans’ ability to obtain a low down payment FHA, VA, Fannie Mae or Freddie Mac loan and that have only deepened Hawaii’s housing crisis and made housing further beyond reach for Hawaii’s families.

I urge you to lend your support to these amendments.

Sincerely,

Manuel Johann Shelley
Homeowner of an “Affordable Home” in Haloa, Ho’opili

February 9, 2024

Senator Jarrett Keohokalole, Chair
Senator Carol Fukunaga, Vice Chair
Members of the Committee on Commerce and Consumer Protection
Thirty-Second Legislature, Regular Session of 2024

RE: SB 2606 & SB 2607 – RELATING TO CONSTRUCTION
Hearing Date: Wednesday, February 14, 2024 at 9:30am
Conference Room 229, State Capitol

Aloha Chair Keohokalole, Vice Chair Fukunaga and Members of the Committee,

I am writing to express my strong **SUPPORT** of SB 2606 & SB 2607 – RELATING TO THE CONTRACTOR REPAIR ACT proposing changes to Section 672E-3 and -4 of the Hawaii Revised Statutes relating to construction defects in housing. The primary reason for my support is the emphasis on protecting both contractors, homeowners and now 1st time homebuyers by requiring specificity in the notice of claim, establishing clear guidelines and timelines for inspections and repairs and discouraging the rejection of reasonable offers. These protections are pivotal to streamline the claim resolution process and mitigate the unnecessary legal disputes that have aggravated Hawaii's housing crisis and made housing unattainable for Hawaii's families.

Recent construction defect litigation has now impacted 1st time homebuyers' ability to obtain a needed government backed mortgage, further deepening Hawaii's housing crisis. Lack of clarity and actual evidence of construction defect claims have encumbered new condominiums currently under construction. As a result, FHA, VA, Fannie Mae and Freddie Mac have taken the position to disqualify new condominium projects with pending litigation. Without low down payment government backed loan programs and without the 20% down payment required by portfolio lending, most 1st time homebuyers and veterans are unfairly foreclosed from purchasing.

The legislation's emphasis on detailing the construction defect in the notice of claim with particularity and specificity is a crucial improvement. This requirement ensures that both parties have a clear understanding of the actual issue at hand supporting the core intent of HRS Section 672E. The proposed amendments will also facilitate more effective communication, transparency and accuracy in the process, thus reducing the likelihood of misunderstandings and frivolous or unsubstantiated claims that have now affected access to critically important FHA, VA, Fannie Mae and Freddie Mac loan programs. Requiring claimants to provide actual evidence of the construction defect promotes transparency and helps validate construction defect claims. This benefits both contractors and homeowners by providing a basis for a more precise, timely and effective remedy, without litigation. It will also provide a basis upon which

mortgage lending on new housing under construction, without legitimate evidence of a construction defect, could continue offering much needed government backed loans.

In conclusion, the proposed changes align with the principles of proactive conflict resolution, promoting a collaborative approach to addressing construction defects in Hawaii. The proposed changes are pivotal to streamline the resolution process and mitigate the deluge of unnecessary legal disputes that have directly affected 1st time homebuyers' and veterans' ability to obtain a low down payment FHA, VA, Fannie Mae or Freddie Mac loan and that have only deepened Hawaii's housing crisis and made housing further beyond reach for Hawaii's families.

I urge you to lend your support to these amendments.

Sincerely,

Mrs. Jane A. Ross

SB-2607

Submitted on: 2/9/2024 3:49:04 PM

Testimony for CPN on 2/14/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Fumie Shelley	Individual	Support	Written Testimony Only

Comments:

Fumie Shelley – Resident of a “Affordable Home” in Ho’opili

To Chair Keohokalole, Vice Chair Fukunaga and Members of the Committee,

I want to express my full endorsement for SB 2606 and SB 2607. Recently, I learned that my community is involved in a lawsuit regarding construction deficiencies in our homes. While I firmly believe these allegations lack merit, it highlights how easy it has become to level accusations without considering the impact on those affected. These legal disputes are entirely unnecessary and only serve to escalate the cost of homeownership in Hawaii.

My family and I feel incredibly fortunate to own a home in Hawaii. However, without the support for SB 2606 and SB 2607, the prospect of homeownership may slip out of reach, particularly for young families. Furthermore, my parents-in-law have been making a diligent effort to meet the requirements for a VA loan, aiming to relocate closer to us so that they can spend more time with our daughter. Regrettably, due to ongoing defect litigations, the VA cannot provide them with a mortgage for a property involved in legal disputes. Affording a conventional loan, which demands a 20% down payment, is beyond their means. This situation is deeply frustrating for my husband and me, and we believe our veterans deserve better.

The proposed amendments in SB 2606 and SB 2607 represent a positive stride towards safeguarding first-time homebuyers in Hawaii, granting them access to lending they desperately require. My family stands as living proof that when affordable housing is offered at a fair price with fair conditions, and the community's interests are safeguarded, families like ours can thrive. It underscores the importance of legislation and business working collaboratively to serve the greater good of our community.

Please support the amendments in SB 2606 and SB 2607.

Thank you.

Fumie Shelley

Homeowner of an “Affordable Home” in Ho’opili



KY International, Inc.
Architects & Planners

Senator Jarrett Keohokalole, Chair
Senator Carol Fukunaga, Vice Chair
Members of the Committee on Commerce and Consumer Protection
Thirty-Second Legislature, Regular Session of 2024

RE: **SB 2607 – RELATING TO CONSTRUCTION**
Hearing Date: Wednesday, February 14, 2024 at 9:30am
Conference Room 229, State Capitol

Aloha Chair Keohokalole, Vice Chair Fukunaga and Members of the Committee,

I am writing to express my strong **SUPPORT** of SB 2607 -- RELATING TO CONSTRUCTION proposing changes to Section 672E-3 and -4 of the Hawaii Revised Statutes relating to construction defects in housing.

These amendments are crucial for fostering a fair, transparent and efficient process for homeowners as well as contractors in addressing construction defects. These amendments are also critical to curbing unnecessary and protracted lawsuits that have resulted in increased insurance costs on the new construction of much needed housing.

Equally as important, recent construction defect litigation has had an unprecedented effect on 1st time homebuyers' ability to obtain a needed government backed mortgage. This has only further exacerbated Hawaii's housing crisis. Lack of clarity and actual evidence of construction defect claims have encumbered not only completed homes but new condominiums currently under construction as well. As a result, FHA, VA, Fannie Mae and Freddie Mac have taken the position to rescind lending approvals on new condominium projects with pending litigation. Without low down payment government backed loan programs and without the 20% down payment required by portfolio lending, most 1st time homebuyers and veterans are unfairly preempted from purchasing.

1. Specificity in Claim Notices Ensures Clarity: The emphasis on detailing the construction defect in the notice of claim with particularity and specificity is a crucial improvement. This requirement ensures that both parties have a clear understanding of the issues at hand, facilitating more effective communication, transparency and accuracy and reducing the likelihood of misunderstandings and frivolous or unsubstantiated claims. The amendments seek to clarify and strengthen the prelitigation notice requirements consistent with other states that have adopted similar legislation (California, Colorado, Nevada, Florida) to decrease the number of unsubstantiated claims, encourage early resolution of claims, and reduce the cost of housing and insurance. Clear and detailed notice helps contractors pinpoint the alleged issues, enabling them to address the concerns more effectively and efficiently.

2. Evidence Submission Promotes Transparency and Efficient Resolution of Claims: Requiring claimants to provide actual evidence of the construction defect, such as expert reports, photographs, videotapes, and testing results, promotes transparency and helps validate construction defect claims. This provision ensures that contractors have access to comprehensive information, promoting fairness and informed decision-making during the resolution process and preventing disputes over the validity of claims, leading to more efficient and effective resolution of construction defect issues. With respect to construction defect claims, this process allows for quicker resolutions and a more accurate assessment of the damages. This benefits contractors and homeowners by providing a basis for a more precise and effective remedy.

3. Amending the Process and Timeframe re Inspection and Repairs Provides More Certainty: By amending the process and timeframe for inspection and repairs, both contractors and homeowners will have more certainty. Establishing clear guidelines and timelines for inspections and repairs can help prevent delays and disputes, providing all parties involved with a clear understanding of the steps and timeframe for resolution. This increased certainty can lead to a more efficient and timely resolution of construction defect claims.

4. Limiting Recovery and Foreclosing Attorney's Fees When Offers are Unreasonably Rejected Ensures Fairness and Efficient Resolution of Claims: Limiting recovery and foreclosing attorney's fees when a proposal to inspect or an offer of repair is unreasonably rejected will result in quicker and fairer resolution of construction defect claims. This provision discourages the rejection of reasonable offers and promotes a more efficient resolution process by preventing unnecessary delays and costly disputes. It also helps to prevent the escalation of legal costs, contributing to a more efficient and cost-effective resolution of construction defect issues.

5. The Amendments will Help Resolve Claims Without Costly and Lengthy Legal Action by Allowing Contractors to Address the Specific Issue Being Raised. The amendments will allow contractors to address the specific issue raised by homeowners. The legislation gives both homeowners and contractors an opportunity to reduce claims without costly and lengthy legal action helping to avoid potentially significant delays to much needed repairs. The amount of construction defect litigation in our state has reached a dire tipping point as evidenced by rising insurance costs, increased housing costs and the unavailability of government backed loans (FHA, VA, USDA, Fannie Mae and Freddie Mac) on condos with litigation, all of which preclude countless 1st time homebuyers from purchasing homes.

In conclusion, the proposed changes to Section 672E-3 and -4 of the Hawaii Revised Statutes represent a thoughtful and balanced approach to address construction defects more effectively in housing and in turn help address Hawaii's housing crisis. These amendments promote early resolution, clarity in communication, and the submission of actual evidence, ultimately benefiting and protecting both homeowners and contractors. I urge you to support and pass this legislation to enhance the fairness and efficiency of the construction defect resolution process in Hawaii and to curb the unnecessary and protracted construction defect litigation that has deepened Hawaii's housing crisis and made housing unattainable for Hawaii's families.

I urge you to lend your support to these amendments.

Sincerely,



Carole M. Ueki
Vice President

KY International, Inc.

1100 Alakea St., Suite 1988
Honolulu, Hawaii 96813
808.524.1268 Ext.113
carole@kyinternational.com

SB-2607

Submitted on: 2/10/2024 7:36:07 AM

Testimony for CPN on 2/14/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Alvin Doi	Individual	Support	Written Testimony Only

Comments:

Aloha Chair Keohokalole and Members of the Committee,

I am a private homeowner residing at Ocean Pointe community for 23 years. My wife and I fully support SB 2607 in it's entirety. We chose to opt out of the class action regarding the foundation straps to the foundation. We found no evidence regarding this claim to our foundation. We continue to enjoy our home and this community. We support this bill because we believe developers build structurally good quality homes and should be able to fix the repairs that are needed, not pay for homes that don't. Let's not add more cost to an already expensive product. Mahalo

Regarding SB 2607
OPPOSED

February 12, 2024

TO: Senate Committee on Commerce and Consumer Protection

HONOLULU, HI

Aloha Chairman Keohokalole and members of the committee,

My name is Diane L. Cook and I am a homeowner in Kunia. I am concerned about issues occurring with my neighbors in Kapolei who are currently involved in a construction defects lawsuit and the implications it would have on any homeowner. When I learned about the defects in their homes, I was shocked and dismayed.

I am opposed to this bill SB 2607.

Here's why -

SB 2607 forces homeowners to literally pay for the construction mistakes made by the contractor or developer.

This bill places a heavy burden on the backs of ordinary homeowners who are trying to protect their family's right to live in a safe and secure home. This bill is about fear, intimidation and favoritism for corporations/businesses who are the giants or Goliaths in the building industry as opposed to the homeowners.

It forces a homeowner to accept the initial offer the builder or contractor makes. It says I "shall" accept.

And if I refuse the offer, I'm penalized. It says I cannot recover a dollar amount that exceeds the contractor's offer that I rejected.

And yet, even if I win my case in court, I am not entitled to get fees to pay my attorneys.

Moreover, I will have to pay the attorney's fees and costs for the developer or contractor who lost the case. This is just a naked attempt to stop or discourage homeowners from having their homes fixed by having them pay for everything.

When I purchase my home, I do not expect the integrity of my home to be compromised before its 10th "birthday". This was the biggest investment most consumers make, even more so here in Hawaii. Please do not make it impossible for me or any family to make sure we live in a safe and secure home.

Please kill this bill.

SINCERELY,
DIANE L. COOK

SB-2607

Submitted on: 2/11/2024 9:56:02 AM

Testimony for CPN on 2/14/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Christy D Marco	Individual	Oppose	Written Testimony Only

Comments:

TO: Senate Committee on Commerce and Consumer Protection
Regarding SB 2607

OPPOSE

Aloha Chairman Keohokalole and members of the committee

My name is Christy Marco and I am a homeowner in Kapolei.

I oppose SB 2607. I am currently involved in a construction defects lawsuit because I want to be able to fix my home in the future. When I learned about the defects in my home, I was shocked and dismayed. This bill would add a level of despair to my response.

Here's why -

SB 2607 makes it impossible for an ordinary homeowner to challenge the big developers or contractors to have his or her home fixed.

This bill adds to the requirements that a homeowner has to fulfill in order to bring a construction defects claim. I don't have the money or even the know how to hire the experts, conduct the investigations, and produce the reports that would be required by this bill. To the naked or untrained eye, the defects may not look like much but I know that the serious and most worrisome parts are hidden from sight.

This bill will effectively do away with class action representation. Some of us chose to be class claimants because we want our neighbors and others in my subdivision to have the same opportunity to have their homes fixed. Vice versa for my home to be safe, I need all of the homes around me to be safe. Otherwise in the next hurricane, even though my walls are securely fastened to my home's foundations, my neighbor's walls may not be and those walls or windows could turn into missiles damaging properties around it.

When I purchased my home, I did not expect the integrity of my home to be compromised before its 10th "birthday". Please do not make it harder for me and my family to make sure we live in a safe and secure home. Please kill this bill.

TO: Senate Committee on Commerce and Consumer Protection

Regarding SB 2607

OPPOSE

Aloha Chairman Keohokalole and members of the committee.

My name is Ryan Hill and I am a homeowner in Kapolei.

I oppose SB 2607. I am currently involved in a construction defects lawsuit because I want my home (or condo unit) to be fixed.

SB 2607 forces homeowners or condo owners to literally pay for the construction mistakes made by the contractor or developer.

This bill places a heavy burden on the backs of ordinary homeowners or condo owners who are trying to protect their family's right to live in a safe and secure home. This bill is about fear, intimidation and favoritism for corporations/businesses who are the giants or Goliaths in the building industry.

- 1) It forces a homeowner to accept the initial offer the builder or contractor makes. It says I "shall" accept.
- 2) And if I refuse the offer, I'm penalized. It says I cannot recover a dollar amount that exceeds the contractor's offer that I rejected.
- 3) And yet, even if I win my case in court, I am not entitled to get fees to pay my attorneys. Moreover, I will have to pay the attorney's fees and costs for the developer or contractor who lost the case. This is just a naked attempt to stop or discourage homeowners from having their homes fixed by having them pay for everything.

When I purchased my home, I did not expect the integrity of my home to be compromised before its 10th "birthday". Please do not make it harder for me and my family to make sure we live in a safe and secure home. Please kill this bill.

TO: Senate Committee on Commerce and Consumer Protection

Regarding SB 2607

OPPOSE

Aloha Chairman Keohokalole and members of the committee.

My name is Brenda Hill and I am a homeowner in Kapolei.

I oppose SB 2607. I am currently involved in a construction defects lawsuit because I want my home (or condo unit) to be fixed.

SB 2607 forces homeowners or condo owners to literally pay for the construction mistakes made by the contractor or developer.

This bill places a heavy burden on the backs of ordinary homeowners or condo owners who are trying to protect their family's right to live in a safe and secure home. This bill is about fear, intimidation and favoritism for corporations/businesses who are the giants or Goliaths in the building industry.

- 1) It forces a homeowner to accept the initial offer the builder or contractor makes. It says I "shall" accept.
- 2) And if I refuse the offer, I'm penalized. It says I cannot recover a dollar amount that exceeds the contractor's offer that I rejected.
- 3) And yet, even if I win my case in court, I am not entitled to get fees to pay my attorneys. Moreover, I will have to pay the attorney's fees and costs for the developer or contractor who lost the case. This is just a naked attempt to stop or discourage homeowners from having their homes fixed by having them pay for everything.

When I purchased my home, I did not expect the integrity of my home to be compromised before its 10th "birthday". Please do not make it harder for me and my family to make sure we live in a safe and secure home. Please kill this bill.

SB-2607

Submitted on: 2/11/2024 2:48:17 PM

Testimony for CPN on 2/14/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Cheryl Heu	Individual	Oppose	Written Testimony Only

Comments:

TO: Senate Committee on Commerce and Consumer Protection

Regarding SB 2607

OPPOSE

Aloha Chairman Keohokalole and members of the committee.

My name is Cheryl Heu and I am a homeowner in Kapolei.

I vehemently oppose SB 2607. I am currently involved in a construction defects lawsuit because I want my home to be safe and secure.

SB 2607 forces homeowners to literally pay for the construction mistakes made by the contractor or developer.

This bill places a heavy burden on the backs of ordinary homeowners who are trying to protect their family's right to live in a safe and secure home. This bill is about fear, intimidation and favoritism for corporations/businesses who are the giants or Goliaths in the building industry.

1. It forces a homeowner to accept the initial offer the builder or contractor makes. It says I "shall" accept.
2. And if I refuse the offer, I'm penalized. It says I cannot recover a dollar amount that exceeds the contractor's offer that I rejected.
3. And yet, even if I win my case in court, I am not entitled to get fees to pay my attorneys. Moreover, I will have to pay the attorney's fees and costs for the developer or contractor who lost the case. This is just a naked attempt to stop or discourage homeowners from having their homes fixed by having them pay for everything.

When we purchased our home, we did not expect the integrity of our home to be compromised before its 10th "birthday". This was the largest investment that we have made. Please do not make it impossible for me and my family to make sure we live in a safe and secure home that

can't be destroyed by an earthquake or hurricane due to faulty anchor bolts. Please KILL this bill.

<input type="checkbox"/> Approved	<input type="checkbox"/> Approved	<input type="checkbox"/> Approved
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SB-2607

Submitted on: 2/11/2024 3:12:59 PM

Testimony for CPN on 2/14/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Rocco Morano	Individual	Oppose	Written Testimony Only

Comments:

TO: Senate Committee on Commerce and Consumer Protection

Regarding SB 2607

OPPOSE

Aloha Chairman Keohokalole and members of the committee.

My name is Rocco Morano and I am a homeowner in Kapolei.

I vehemently oppose SB 2607. I am currently involved in a construction defects lawsuit because I want my home to be safe and secure.

SB 2607 forces homeowners to literally pay for the construction mistakes made by the contractor or developer.

This bill places a heavy burden on the backs of ordinary homeowners who are trying to protect their family's right to live in a safe and secure home. This bill is about fear, intimidation and favoritism for corporations/businesses who are the giants or Goliaths in the building industry.

It forces a homeowner to accept the initial offer the builder or contractor makes. It says I "shall" accept. [SEP]

And if I refuse the offer, I'm penalized. It says I cannot recover a dollar amount that exceeds the contractor's offer that I rejected. [SEP]

And yet, even if I win my case in court, I am not entitled to get fees to pay my attorneys. Moreover, I will have to pay the attorney's fees and costs for the developer or contractor who lost the case. This is just a naked attempt to stop or discourage homeowners from having their homes fixed by having them pay for everything.

When I purchased my home, I did not expect the integrity of my home to be compromised before its 10th "birthday". This was the biggest investment we made. Please do not make it impossible for me and my family to make sure we live in a safe and secure home. Please kill this bill.

Very truly yours,

Rocco Morano, Kapolei, HI

SB-2607

Submitted on: 2/11/2024 3:55:50 PM

Testimony for CPN on 2/14/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Kasey Tabar	Individual	Oppose	Written Testimony Only

Comments:

Strongly oppose this bill!

SB-2607

Submitted on: 2/11/2024 4:12:06 PM

Testimony for CPN on 2/14/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Eric Heu	Individual	Oppose	Written Testimony Only

Comments:

TO: Senate Committee on Commerce and Consumer Protection

Regarding SB 2607

OPPOSE

Aloha Chairman Keohokalole and members of the committee.

My name is Eric Heu and I am a homeowner in Kapolei.

I vehemently oppose SB 2607. I am currently involved in a construction defects lawsuit because I want my home to be safe and secure.

SB 2607 forces homeowners to literally pay for the construction mistakes made by the contractor or developer.

This bill places a heavy burden on the backs of ordinary homeowners who are trying to protect their family's right to live in a safe and secure home. This bill is about fear, intimidation and favoritism for corporations/businesses who are the giants or Goliaths in the building industry.

1. It forces a homeowner to accept the initial offer the builder or contractor makes. It says I "shall" accept.
2. And if I refuse the offer, I'm penalized. It says I cannot recover a dollar amount that exceeds the contractor's offer that I rejected.
3. And yet, even if I win my case in court, I am not entitled to get fees to pay my attorneys. Moreover, I will have to pay the attorney's fees and costs for the developer or contractor who lost the case. This is just a naked attempt to stop or discourage homeowners from having their homes fixed by having them pay for everything.

When we purchased our home, we did not expect the integrity of our home to be compromised before its 10th "birthday". This was the largest investment that we have made. Please do not make it impossible for me and my family to make sure we live in a safe and secure home that

can't be destroyed by an earthquake or hurricane due to faulty anchor bolts. Please KILL this bill.

Sincerely,

Eric Heu

SB-2607

Submitted on: 2/11/2024 4:39:59 PM

Testimony for CPN on 2/14/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Martin Ramirez	Individual	Oppose	Written Testimony Only

Comments:

TO: Senate Committee on Commerce and Consumer Protection Regarding SB 2607 OPPOSE Aloha Chairman Keohokalole and members of the committee. My name is Martin Ramirez and I am a homeowner in Kapolei. I oppose SB 2607.

First and foremost, we entrusted you to be our representation and believe that you will do the best for the citizens that you represent.

I am currently involved in a construction defects lawsuit because I want my home to be safe and secure. SB 2607 forces homeowners to literally pay for the construction mistakes made by the contractor or developer. This bill places a heavy burden on the backs of ordinary homeowners who are trying to protect their family's right to live in a safe and secure home. This bill is about fear, intimidation and favoritism for corporations/businesses who are the giants or Goliaths in the building industry. It forces a homeowner to accept the initial offer the builder or contractor makes. It says I "shall" accept. ^[1]_[SEP] And if I refuse the offer, I'm penalized. It says I cannot recover a dollar amount that exceeds the contractor's offer that I rejected. ^[1]_[SEP] And yet, even if I win my case in court, I am not entitled to get fees to pay my attorneys. Moreover, I will have to pay the attorney's fees and costs for the developer or contractor who lost the case. This is just a naked attempt to stop or discourage homeowners from having their homes fixed by having them pay for everything. When I purchased my home, I did not expect the integrity of my home to be compromised before its 10th "birthday". This was the biggest investment we made. Please do not make it impossible for me and my family to make sure we live in a safe and secure home. Please kill this bill.

SB-2607

Submitted on: 2/11/2024 4:52:11 PM

Testimony for CPN on 2/14/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Melodia Gomez	Individual	Oppose	Written Testimony Only

Comments:

TO: Senate Committee on Commerce and Consumer Protection
Regarding SB 2607

OPPOSE

Aloha Chairman Keohokalole and members of the committee.

My name is Melodia Gomez and I am a homeowner in Kapolei.

I oppose SB 2606 and SB 2607. I am currently involved in a construction defects lawsuit because I want my home to be safe and secure.

SB 2606 and SB 2607 forces homeowners to literally pay for the construction mistakes made by the contractor or developer.

This bill places a heavy burden on the backs of ordinary homeowners who are trying to protect their family's right to live in a safe and secure home. This bill is about fear, intimidation and favoritism for corporations/businesses who are the giants or Goliaths in the building industry.

It forces a homeowner to accept the initial offer the builder or contractor makes. It says I "shall" accept. [L] [SEP]

And if I refuse the offer, I'm penalized. It says I cannot recover a dollar amount that exceeds the contractor's offer that I rejected. [L] [SEP]

And yet, even if I win my case in court, I am not entitled to get fees to pay my attorneys. Moreover, I will have to pay the attorney's fees and costs for the developer or contractor who lost the case. This is

just a naked attempt to stop or discourage homeowners from having their homes fixed by having them pay for everything.

When I purchased my home, I did not expect the integrity of my home to be compromised. This was the biggest investment we made. Please do not make it impossible for me and my family to make sure we live in a safe and secure home. Please kill this bill.

A Hawaii state tax payer!

SB-2607

Submitted on: 2/11/2024 4:56:14 PM

Testimony for CPN on 2/14/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Contre Gomez	Individual	Oppose	Written Testimony Only

Comments:

TO: Senate Committee on Commerce and Consumer Protection
Regarding SB 2607

OPPOSE

Aloha Chairman Keohokalole and members of the committee.

My name is Melodia Gomez and I am a homeowner in Kapolei.

I oppose SB 2606 and SB 2607. I am currently involved in a construction defects lawsuit because I want my home to be safe and secure.

SB 2606 and SB 2607 forces homeowners to literally pay for the construction mistakes made by the contractor or developer.

This bill places a heavy burden on the backs of ordinary homeowners who are trying to protect their family's right to live in a safe and secure home. This bill is about fear, intimidation and favoritism for corporations/businesses who are the giants or Goliaths in the building industry.

It forces a homeowner to accept the initial offer the builder or contractor makes. It says I "shall" accept. [L] [SEP]

And if I refuse the offer, I'm penalized. It says I cannot recover a dollar amount that exceeds the contractor's offer that I rejected. [L] [SEP]

And yet, even if I win my case in court, I am not entitled to get fees to pay my attorneys. Moreover, I will have to pay the attorney's fees and costs for the developer or contractor who lost the case. This is

just a naked attempt to stop or discourage homeowners from having their homes fixed by having them pay for everything.

When I purchased my home, I did not expect the integrity of my home to be compromised. This was the biggest investment we made. Please do not make it impossible for me and my family to make sure we live in a safe and secure home. Please kill this bill.

A Hawaii state tax payer!

SB-2607

Submitted on: 2/11/2024 7:20:29 PM

Testimony for CPN on 2/14/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Paul Orman	Individual	Oppose	Written Testimony Only

Comments:

I am a retired homeowner in Sea Country in Waianae. My house is currently in a group of homes discovered to have defects with the foundation tie down bolts due to workmanship and/or material defects.

I am strongly opposed to SB2607 due to language that places an undue burden on the homeowner in litigation negotiations in accepting offers of restitution from builders or material providers when clear defects has been found.

As a retired homeowner, I am not in a financial position to make 10's of thousands or 100s of thousands USD of repair to my home due to defects clearly shown to be because of builder workmanship or material defects (or substandard materials used). If these defects are known, and not corrected, they could cost me a lot of money at the sale of my home. Whether any potential sale is near term or long term, due to any unforeseen life events, or simply as a planned change, having unresolved defects within the home will affect the sale value. If the defect is due to workmanship or materials, the burden is magnified beyond what an individual may be able to shoulder.

This bill may have the potential to cause unintended impacts to home values and turmoil within the Hawaii real estate market as home sellers and home buyers go through litigation to try and sort issues out that were originally caused by a third party (who in this case will have been excused with little or no culpability).

For these reasons I oppose SB2607.

Paul Orman retired homeowner Waianae

SB-2607

Submitted on: 2/11/2024 8:03:08 PM

Testimony for CPN on 2/14/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
J. Chun	Individual	Oppose	Written Testimony Only

Comments:

I oppose this bill.

SB-2607

Submitted on: 2/11/2024 8:39:11 PM

Testimony for CPN on 2/14/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Mahina Bueno	Individual	Oppose	Written Testimony Only

Comments:

Aloha Chairman Keohokalole

I kindly ask you to oppose SB 2607. A friend of mine is currently involved in a construction defects lawsuit because she found defects in her home & the builders are refusing to fix it. SB 2607 forces homeowners to literally pay for the construction mistakes made by the contractor or developer.

This bill places a heavy burden on the backs of ordinary homeowners who are trying to protect their family's right to live in a safe and secure home. This bill is about fear, intimidation and favoritism for corporations/businesses who are the giants or Goliaths in the building industry. It forces a homeowner to accept the initial offer the builder or contractor makes. It says I "shall" accept.

And if they refuse the offer, they're penalized. It says they cannot recover a dollar amount that exceeds the contractor's offer that they rejected.

And yet, even if they win their case in court, they're not entitled to get fees to pay their attorneys. Moreover, they will have to pay the attorney's fees and costs for the developer or contractor who lost the case. This is just a naked attempt to stop or discourage homeowners from having their homes fixed by having them pay for everything. When people purchase a home, they do not expect the integrity of their home to be compromised before its 10th "birthday". Please kill this bill.

SB-2607

Submitted on: 2/11/2024 8:54:56 PM

Testimony for CPN on 2/14/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Ihan Lam	Individual	Oppose	Written Testimony Only

Comments:

TO: Senate Committee on Commerce and Consumer Protection

Regarding SB 2607

OPPOSE

Aloha Chairman Keohokalole and members of the committee.

My name is Ihan Lam and I am a homeowner in Kapolei.

I oppose SB 2607. I am currently involved in a construction defects lawsuit because I want my home to be safe and secure.

SB 2607 forces homeowners to literally pay for the construction mistakes made by the contractor or developer.

This bill places a heavy burden on the backs of ordinary homeowners who are trying to protect their family's right to live in a safe and secure home. This bill is about fear, intimidation and favoritism for corporations/businesses who are the giants or Goliaths in the building industry.

It forces a homeowner to accept the initial offer the builder or contractor makes. It says I "shall" accept.

And if I refuse the offer, I'm penalized. It says I cannot recover a dollar amount that exceeds the contractor's offer that I rejected.

And yet, even if I win my case in court, I am not entitled to get fees to pay my attorneys. Moreover, I will have to pay the attorney's fees and costs for the developer or contractor who lost the case. This is just a naked attempt to stop or discourage homeowners from having their homes fixed by having them pay for everything.

When I purchased my home, I did not expect the integrity of my home to be compromised before its 10th “birthday”. This was the biggest investment we made. Please do not make it impossible for me and my family to make sure we live in a safe and secure home. Please kill this bill.

Very respectfully,

Ihan Lam

1279 Kukulu Street

Kapolei HI 96707

SB-2607

Submitted on: 2/11/2024 9:40:36 PM

Testimony for CPN on 2/14/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Charles K Mattson Jr	Individual	Oppose	Written Testimony Only

Comments:

To: Senate Committee on Commerce and Consumer Protection.

Regarding SB 2607

OPPOSE

Aloha Chairman Keohokalole and members of the committee.

My name is Charles K Mattson Jr and I am a homeowner in Kapolei. I oppose SB 2607.

SB 2607 forces homeowners to pay for construction mistakes made by the contractor or developer. This bill places a heavy burden on ordinary homeowners who are trying to protect their family's right to live in a safe and secure home. This bill is about fear, intimidation and favoritism for corporations and businesses who are the giants in the building industry. It forces a homeowner to accept the initial offer the builder or contractor makes. It says I "shall" accept. And if I refuse the offer, I am penalized. It says I cannot recover a dollar amount that exceeds the contractor's offer I rejected. And yet, even if I win my case in court, I am not entitled to get fees to pay my attorneys.

Moreover, I will have to pay the attorneys fees and costs for the developer and contractors who lost the case. This is a naked attempt to stop and discourage homeowners from having their homes fixed by having the homeowners pay for everything.

When I purchased my home I did not expect the integrity of my home would be compromised by contractors using improper/sub standard materials that affect the safety of their products to make a profit. Please do not make it harder for me and my family to make sure we live in a safe and secure home. Please kill SB 2607.

Sincerely,

Charles K.Mattson Jr.

Concerned homeowner

SB-2607

Submitted on: 2/11/2024 11:01:50 PM

Testimony for CPN on 2/14/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Sheena-Marie Shimose	Individual	Oppose	Written Testimony Only

Comments:

Aloha Chairman Keohokalole and members of the committee.

My name is Sheena-Marie Shimose and I am a homeowner in Kapolei.

I oppose SB 2607. I am currently involved in a construction defects lawsuit because I want my home to be safe and secure.

SB 2607 forces homeowners to literally pay for the construction mistakes made by the contractor or developer.

This bill places a heavy burden on the backs of ordinary homeowners who are trying to protect their family's right to live in a safe and secure home. This bill is about fear, intimidation and favoritism for corporations/businesses who are the giants or Goliaths in the building industry. It forces a homeowner to accept the initial offer the builder or contractor makes. It says I "shall" accept.

And if I refuse the offer, I'm penalized. It says I cannot recover a dollar amount that exceeds the contractor's offer that I rejected.

And yet, even if I win my case in court, I am not entitled to get fees to pay my attorneys.

Moreover, I will have to pay the attorney's fees and costs for the developer or contractor who lost the case. This is just a naked attempt to stop or discourage homeowners from having their homes fixed by having them pay for everything.

When I purchased my home, I did not expect the integrity of my home to be compromised before its 10th "birthday". This was the biggest investment we made. Please do not make it impossible for me and my family to make sure we live in a safe and secure home. Please kill this bill.

SB-2607

Submitted on: 2/11/2024 11:08:56 PM

Testimony for CPN on 2/14/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Mahealani Kiyon	Individual	Oppose	Written Testimony Only

Comments:

Aloha Chairman Keohokalole and members of the committee,

My name is Mahealani Kiyon and I am a homeowner in Kapolei. I am a teacher making a modest income who is fighting to keep my house safe with quality materials that developers did not use when initially constructing my home.

I oppose SB 2607. I am currently involved in a construction defects lawsuit because I want my home to be safe and secure.

SB 2607 forces homeowners to literally pay for the construction mistakes made by the contractor or developer.

This bill places a heavy burden on the backs of ordinary homeowners who are trying to protect their family's right to live in a safe and secure home. This bill is about fear, intimidation and favoritism for corporations/businesses who are the giants or Goliaths in the building industry. It forces a homeowner to accept the initial offer the builder or contractor makes. It says I "shall" accept.

And if I refuse the offer, I'm penalized. It says I cannot recover a dollar amount that exceeds the contractor's offer that I rejected.

And yet, even if I win my case in court, I am not entitled to get fees to pay my attorneys.

Moreover, I will have to pay the attorney's fees and costs for the developer or contractor who lost the case. This is just a naked attempt to stop or discourage homeowners from having their homes fixed by having them pay for everything.

When I purchased my home, I did not expect the integrity of my home to be compromised before its 10th "birthday". This was the biggest investment we made. Please do not make it impossible for me and my family to make sure we live in a safe and secure home. Please kill this bill.

SB-2607

Submitted on: 2/12/2024 8:28:15 AM

Testimony for CPN on 2/14/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Joslyn Gibbs	Individual	Oppose	Written Testimony Only

Comments:

TO: Senate Committee on Commerce and Consumer Protection
Regarding SB 2607

OPPOSE

Aloha Chairman Keohokalole and members of the committee

My name is Joslyn Gibbs and I am a homeowner in Kapolei.

I oppose SB 2607. I am currently involved in a construction defects lawsuit because I want my home to be fixed. When I learned about the defects in my home, I was shocked and dismayed. This bill would add a level of despair to my response.

Here's why -

SB 2607 makes it impossible for an ordinary homeowner to challenge the big developers or contractors to have his or her home fixed.

This bill adds to the requirements that a homeowner has to fulfill in order to bring a construction defects claim. I don't have the money or even the know how to hire the experts, conduct the investigations, and produce the reports that would be required by this bill. To the naked or untrained eye, the defects may not look like much but I know that the serious and most worrisome parts are hidden from sight.

This bill will effectively do away with class action representation. Some of us chose to be class claimants because we want our neighbors and others in my subdivision to have the same opportunity to have their homes fixed. Vice versa for my home to be safe, I need all of the homes around me to be safe. Otherwise in the next hurricane, even though my walls are securely fastened to my home's foundations, my neighbor's walls may not be and those walls or windows could turn into missiles damaging properties around it.

When I purchased my home, I did not expect the integrity of my home to be compromised before its 10th "birthday". Please do not make it harder for me and my family to make sure we live in a safe and secure home. Please kill this bill.

SB-2607

Submitted on: 2/12/2024 6:28:46 PM

Testimony for CPN on 2/14/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Brian Coughlin	Individual	Oppose	Written Testimony Only

Comments:

TO: Senate Committee on Commerce and Consumer Protection

Regarding SB 2607

OPPOSE

Aloha Chairman Keohokalole and members of the committee.

My name is Brian Coughlin and I am a homeowner in Kapolei.

I oppose SB 2607. I am currently involved in a construction defects lawsuit because I want my home to be safe and secure.

SB 2607 forces homeowners to literally pay for the construction mistakes made by the contractor or developer.

This bill places a heavy burden on the backs of ordinary homeowners who are trying to protect their family's right to live in a safe and secure home. This bill is about fear, intimidation and favoritism for corporations/businesses who are the giants or Goliaths in the building industry.

- 1) It forces a homeowner to accept the initial offer the builder or contractor makes. It says I "shall" accept.
- 2) And if I refuse the offer, I'm penalized. It says I cannot recover a dollar amount that exceeds the contractor's offer that I rejected.
- 3) And yet, even if I win my case in court, I am not entitled to get fees to pay my attorneys. Moreover, I will have to pay the attorney's fees and costs for the developer or contractor who lost the case. This is just a naked attempt to stop or discourage homeowners from having their homes fixed by having them pay for everything.

When I purchased my home, I did not expect the integrity of my home to be compromised before its 10th "birthday". This was the biggest investment we made. Please do not make

it impossible for me and my family to make sure we live in a safe and secure home. Please kill this bill.

Tiffanie L. Gardner

1767 Glen Avenue Wahiawa, HI 96786

808.824.0027

Senator Jarrett Keohokalole, Chair
Senator Carol Fukunaga, Vice Chair
Members of the Committee on Commerce and Consumer Protection
Thirty-Second Legislature, Regular Session of 2024

RE: **SB 2606 & SB 2607 – RELATING TO CONSTRUCTION**
Hearing Date: Wednesday, February 14, 2024 at 9:30am
Conference Room 229, State Capitol

Aloha Chair Keohokalole, Vice Chair Fukunaga and Members of the Committee,

I am writing to express my strong **SUPPORT** of SB 2606 & SB 2607 – RELATING TO CONSTRUCTION proposing changes to Section 672E-3 and -4 of the Hawaii Revised Statutes relating to construction defects in housing.

These amendments are crucial for fostering a fair, transparent and efficient process for homeowners as well as contractors in addressing construction defects. These amendments are also critical to curbing unnecessary and protracted lawsuits that have resulted in increased insurance costs on the new construction of much needed housing.

Equally as important, recent construction defect litigation has had an unprecedented effect on 1st time homebuyers' ability to obtain a needed government backed mortgage. This has only further exacerbated Hawaii's housing crisis. Lack of clarity and actual evidence of construction defect claims have encumbered not only completed homes but new condominiums currently under construction as well. As a result, FHA, VA, Fannie Mae and Freddie Mac have taken the position to rescind lending approvals on new condominium projects with pending litigation. Without low down payment government backed loan programs and without the 20% down payment required by portfolio lending, most 1st time homebuyers and veterans are unfairly preempted from purchasing.

1. Specificity in Claim Notices Ensures Clarity: The emphasis on detailing the construction defect in the notice of claim with particularity and specificity is a crucial improvement. This requirement ensures that both parties have a clear understanding of the issues at hand, facilitating more effective communication, transparency and accuracy and reducing the likelihood of misunderstandings and frivolous or unsubstantiated claims. The amendments seek to clarify and strengthen the prelitigation notice requirements consistent with other states that have adopted similar legislation (California, Colorado, Nevada, Florida) to decrease the number of unsubstantiated claims, encourage early resolution of claims, and reduce the cost of housing and insurance. Clear and detailed notice helps contractors pinpoint the alleged issues, enabling them to address the concerns more effectively and efficiently.

2. Evidence Submission Promotes Transparency and Efficient Resolution of Claims: Requiring claimants to provide actual evidence of the construction defect, such as expert reports, photographs, videotapes, and testing results, promotes transparency and helps validate construction defect claims. This provision ensures that contractors have access to comprehensive information, promoting fairness and informed decision-making during the resolution process and preventing disputes over the validity of claims, leading to more efficient and effective resolution of construction defect issues. With respect to construction defect claims, this process allows for quicker resolutions and a more accurate assessment of the damages. This benefits contractors and homeowners by providing a basis for a more precise and effective remedy.

3. Amending the Process and Timeframe re Inspection and Repairs Provides More Certainty: By amending the process and timeframe for inspection and repairs, both contractors and homeowners will have more certainty. Establishing clear guidelines and timelines for inspections and repairs can help prevent delays and disputes, providing all parties involved with a clear understanding of the steps and timeframe for resolution. This increased certainty can lead to a more efficient and timely resolution of construction defect claims.

4. Limiting Recovery and Foreclosing Attorney's Fees When Offers are Unreasonably Rejected Ensures Fairness and Efficient Resolution of Claims: Limiting recovery and foreclosing attorney's fees when a proposal to inspect or an offer of repair is unreasonably rejected will result in quicker and fairer resolution of construction defect claims. This provision discourages the rejection of reasonable offers and promotes a more efficient resolution process by preventing unnecessary delays and costly disputes. It also helps to prevent the escalation of legal costs, contributing to a more efficient and cost-effective resolution of construction defect issues.

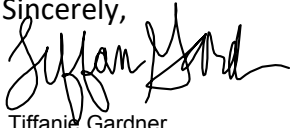
5. The Amendments will Help Resolve Claims Without Costly and Lengthy Legal Action by Allowing Contractors to Address the Specific Issue Being Raised. The amendments will allow contractors to address the specific issue raised by homeowners. The legislation gives both homeowners and contractors an opportunity to reduce claims without costly and lengthy legal action helping to avoid potentially significant delays to much needed repairs. The amount of construction defect litigation in our state has reached a dire tipping point as evidenced by rising insurance costs, increased housing costs and the unavailability of government backed loans (FHA, VA, USDA, Fannie Mae and Freddie Mac) on condos with litigation, all of which preclude countless 1st time homebuyers from purchasing homes.

In conclusion, the proposed changes to Section 672E-3 and -4 of the Hawaii Revised Statutes represent a thoughtful and balanced approach to more effectively address construction defects in housing and in turn help address Hawaii's housing crisis. These amendments promote early resolution, clarity in communication, and the submission of actual evidence, ultimately benefiting and protecting both homeowners and contractors. I urge you to support and pass

this legislation to enhance the fairness and efficiency of the construction defect resolution process in Hawaii and to curb the unnecessary and protracted construction defect litigation that has deepened Hawaii's housing crisis and made housing unattainable for Hawaii's families.

I urge you to lend your support to these amendments.

Sincerely,

A handwritten signature in black ink, appearing to read "Tiffanie Gardner". The signature is fluid and cursive, with the first name being more prominent.

Tiffanie Gardner
tiffanie@toppriorityhawaii.com
808.824.0027

LATE

Senator Jarrett Keohokalole, Chair
Senator Carol Fukunaga, Vice Chair
Members of the Senate Committee on Commerce and Consumer Protection
Thirty-Second Legislature, Regular Session of 2024

Re: SB 2607- RELATING TO CONSTRUCTION
Testimony of Richard Manning Opposing HB 2607
Homeowner at Kapiolani Residence, 1631 Kapiolani Blvd., Honolulu, HI 96826

Chair Keohokalole, Vice Chair Fukunaga, and members of committee,

I **OPPOSE** SB 2607 – RELATING TO CONSTRUCTION, which proposes amendments to the Contractor Repair Act under Hawai'i Revised Statute § 672E, which would force homeowners and Associations to accept any offer made by the developer or contractor to settle claims for construction defect, prevent homeowners and Associations from being awarded more than the contractor's offer, and threaten homeowners and Associations by requiring them to pay for developer's and contractor's attorney's fees if they reject the offer, even if the homeowner or Association ultimately prevails in court.

When it comes to the subject of construction defects, I have firsthand experience with a unit my wife and I had purchased back in 2018. I'm a unit owner at Kapiolani Residence on 1631 Kapiolani Blvd., which at the time was a brand-new project. As a first-time home buyer what should have been an exciting and joyous occasion for my family and I turned out to be a continuous nightmare. I'll share some examples of what my family and I have experienced.

Shortly after we moved in we encountered some significant issues. The first was backups in the kitchen sink. In the beginning it wasn't noticeable, but overtime it got progressively worse. At its peak the backups would occur every few minutes.

Below is an example photograph of backups that occur in my kitchen sink:



Unfortunately, I don't have more photos but what you don't see is the sewage water underneath the bubbles. When the water and bubbles eventually recede there would be sludge pieces that would leave a horrible smell. We had to be on constant alert because there was always a fear that the sink would eventually overflow and flood the kitchen and living room.

Our unit has also been impacted by defects with the PEX water supply lines. There was a leak in the PEX pipes which resulted in mold damage. It took weeks to get everything resolved and the repair costs were in the thousands.

Not only was the process long there were constant disruptions to our daily lives. The repairs involved a large number of groups so we needed to plan our day according to their schedules to ensure these individuals had access to our unit and could perform their jobs.

Some people might not think this is significant, but when you work full time and have other responsibilities it is not always easy to fit things into your daily schedule.



Our Association has gone through the Contractor Repair Act and filed a lawsuit against the developer and general contractor of the condo for multiple defects identified in the building. As mentioned previously there are numerous defects in the building, but I don't have time to go through everything I've experienced. However, I've tried to share some of the significant ones that have impacted me personally.

Currently, the Association is able to pursue adequate compensation for these defects, and numerous other defects in the building because the Contractor Repair Act allows the Association to assess whether any offer made during the Contractor Repair Act is reasonable and has the choice to accept the offer or pursue litigation.

SB 2607 would amend the Contractor Repair Act to force homeowners and Associations to accept any offer made during the Contractor Repair Act process, no matter how low the offer is.

The bill would punish homeowners who reject an offer. If a claimant “unreasonably rejects” the developer’s or contractor’s offer, (1) the claimant cannot recover any amount that exceeds the total value of the offer, (2) is denied attorney’s fees and costs, even if the claimant is the prevailing party, and (3) would be required to pay attorney’s fees and costs even if the claimant is the prevailing party. There is no explanation on what is “unreasonable” and the attorney’s fees provision is a one-way street: only the contractor or developer can recover attorney’s fees even if they ultimately are found liable for the construction defects.

The proposed amendments create a way for the contractor to pressure homeowners and associations into accepting their offer.

If the amendments in this bill applied to Kapiolani Residence, the contractor or developer could have forced the Association to accept a deficient offer or face having to pay for its attorney’s fees.

I, therefore, ask this committee to strongly consider the rights of homeowners and Associations, and stop this bill from moving forward in the Senate.

Thank you for your consideration.