



Testimony of Christopher Hikida
State of Hawaii, House of Representatives
Thirty-Third Legislative Session 2025

To: The Committee on Judiciary & Hawaiian Affairs
Re: **OPPOSITION** to Proposed Bill H.B. 981

Chairman Tarnas, Vice Chairman Poepoe, and Members of the Committee:

My name is Christopher Hikida, and I am a Partner in the Hawaii office of the law firm of Kasdan Turner Thomson Booth, LLLC. We practice plaintiff-side construction defect litigation and we represent homeowners, Associations, and other entities in pursuing their legal rights against Developers, Contractors, and Product Manufacturers, seeking safe and code-compliant housing.

I **OPPOSE** H.B. 981 as it would not achieve the goal of affording prevailing property owners with more funds to repair construction defects.

H.B. 981 requires that plaintiff’s attorneys work on an “accrued” or hourly basis, and limits the collective fees and costs to 25% of the total recovery.

As such, H.B. 981 would prevent property owners without funds from getting access to a qualified attorney and prevent attorneys from funding litigation costs for homeowners in need and would significantly reduce property owners’ chance at sufficient recovery by limiting their ability to properly work up their claims.

The bill also modifies the attorney’s fees which can be paid by the plaintiff in a case, but does not limit what defendants, often funded by deep pocket insurance companies, can spend to try to limit the owners’ claims.

The solution to ensure that property owners retain more of their recovery for repairs is simple—pass legislation entitling plaintiffs to reasonable attorney’s fees in construction defect cases. This is not a novel idea. In fact, Hawaii’s consumer protection statute, HRS § 480-13 (Unfair or Deceptive Acts and Practices), provides a model that allows prevailing consumers to be awarded reasonable attorney’s fees with costs. Hawaii also allows for fee shifting for claims brought in assumpsit under HRS § 604-14 (assumpsit claims).

HAWAII*	ARIZONA	CALIFORNIA (SOUTHERN)	CALIFORNIA (NORTHERN)	NEW MEXICO
1003 Bishop Street Suite 1180 Honolulu, Hawaii 96813 808.369.8393 808.369.8392 Fax	3200 North Central Avenue Suite 2100 Phoenix, Arizona 85012 602.224.7800 602.224.7801 Fax	18100 Von Karman Avenue Suite 750 Irvine, California 92612 949.851.9000 949.833.9455 Fax	1280 Civic Drive. Suite 200 Walnut Creek, California 94596 925.906.9220 925.906.9221 Fax	6301 Indian School Road NE Suite 614 Albuquerque, New Mexico 87110 505.219.4204 505.219.4205 Fax

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

My legal practice

My firm currently represents over 2,000 unit owners through their Associations in various high-rise buildings throughout Honolulu 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 with the homes predominantly located on Oahu, Maui, and Kauai in a certified class action lawsuit regarding corroded foundation systems, and over 1,250 homeowners in a certified class in the Ewa Beach area concerning corroded foundation hardware.

We have also represented over 5,000 homeowners in a variety of actions in the Ewa Beach area concerning corroded foundation hardware, where, post-lawsuit, essentially each and every home has had the entirety of their foundation hardware replaced as a result of hard-fought litigation. We have substantial, real-world, hands-on experience in advocating for homeowner rights.

The need for contingency fees in construction defect cases

Most homeowners that we work with cannot afford to pay hourly fees to hire attorneys, the necessary expert consultants, and work up the claims. The costs for investigating and working up claims can be significant, and they often don't have the resources, especially when considering that many homeowners can barely afford the high cost of housing in Hawaii. Likewise, we represent residential high-rise Associations that are majority workforce housing, where the Association and its members lack the means to pay for fees and costs associated with a high-rise construction defect case.

Many firms typically work on a contingency basis, and often advance all costs of the litigation and recover fees and costs if, and only if, they are able to reach a settlement or obtain a reward. This is a common practice in plaintiff-side litigation, including plaintiff-side construction defect litigation. It benefits homeowners because they do not risk having to pay significant costs and fees for litigation in the event that they lose, and any fees and costs are only paid from the proceeds of a settlement or award.

Contingency fee structures are also important because the attorneys' and homeowners' interests are aligned—both want to maximize the recovery for the homeowners, and as a result homeowners has more to spend on repairs.

H.B. 981 takes away those incentives, and creates an economic conflict between the client and their counsel by requiring attorneys to work on an hourly basis, and limiting the amount of hours and costs that can be spent on working up the homeowner's claims.

Current contingency fees in non-class cases

Construction defect litigation involves many types of clients, ranging from individual homeowners, Associations, and commercial owners who are all faced with a wide variety of defects, claims, and individualized circumstances. Attorneys must work with our clients to

determine a working arrangement that best suits their needs, and a litigation strategy to get them the best result. Our fees are based on various factors, including the costs that might need to expend, the risk of actually being able to recover due to various legal and factual factors, the size of the case, and the amount of hours that is likely to be expended.

It is important to note that a fee structure is typically reviewed by an Association's general counsel and are negotiated.

Current contingency fees in non-class cases

Where attorneys represent individual homeowners in class actions, a judge is required to review and approve any fees that are ultimately awarded.

In all cases, whether the case is ultimately settled or there is a judgment with recovery to the class, attorneys are required to make an application for a fee with the Court, and the Court must approve the fee. The Court will review the hours spent by the attorneys, and make a decision on the fees based on multiple factors, including the nature and complexity of the case, the hours spent, and the benefit to the class members. The Court will review the costs expended on the case to determine whether they are reasonable. A fee application is made to the court as a Notice to all parties, and the class members have the opportunity to oppose and be heard. As such, the limitations in the bill are unnecessary, as adequate procedural limitations exist to monitor fees in class actions.

In some cases, during settlement negotiations, the parties will first negotiate a settlement amount for the class. Then, only after the settlement has been agreed-upon will the parties negotiate a separate attorneys fee to be directly paid by the defendant—with an agreement that a judge or mediator will make final determination if the parties cannot come to an agreement.

H.B. 981 would limit property owners' ability to freely contract with attorneys and prevent homeowners from obtaining legal representation

Homeowners, Associations and other property owners often have limited funds to pursue their construction defect claims. So contingency fee agreements remain a critical part of the construction defect practice. However, every property owner has a unique set of circumstance in seeking recovery for construction defects—such as the size of the claims, the strength of the claims, and whether they face certain obstacles like potential statute of limitations or counterclaims.

As such, property owners need to be able to freely contract with the attorney of their choice in order to enter into an agreement that is right for them.

However, H.B. 981 would make it impossible for many property owners to obtain legal representation as it would eliminate contingency fees and make representation of various homeowners unfeasible.

By requiring attorneys to work on an “accrued” or hourly basis, H.B. 981 would eliminate the contingency fee structure for homeowners who do not have the resources to cover costs and

fees in a case. This means that homeowners without sufficient assets would not be able to obtain legal representation.

Likewise, it would prevent many homeowners from obtaining legal services, where the recovery is likely limited, and therefore it is unfeasible to keep fees and costs under 25% of the potential recovery. For example:

- smaller cases;
- cases where the defendants don't have sufficient insurance;
- or there are potential counterclaims which would eat away at the ultimate recovery.

In these circumstances, it is unlikely that the property owner will recover the full amount that they are asking for. In these situations, homeowners still have an interest in pursuing recovery, but would not be able to do so under the limitations set forth under H.B. 981.

Therefore, H.B. 981 would unnecessarily restrict contingency fees, preventing homeowners who cannot afford to pay for legal fees and services from obtaining ANY legal representation. Additionally, it would prevent homeowners with smaller claims or those who face certain challenges to recovery from obtaining legal representation, as there would not enough proceeds to pay for fees and costs.

H.B. 981 would impede homeowners' ability to effectively prosecute their claims and lead to a huge disparity in legal capacity between homeowners and contractors

In a typical contingency fee relationship, while the attorney takes on the risk of the litigation, both the homeowner and the attorney share an interest to maximize recovery to pay for repairs. They are free to pursue a strategy that they believe would lead to the best result—including administering costs and attorney time in a way that they believe will maximize recovery.

However, H.B. 981 would limit the amount of work the plaintiff can put into its case. The attorney would be required to limit costs and fees to prevent a violation of H.B. 981 regardless of whether those constraints lead to less recovery.

Limiting costs and fees would ultimately constrain the parties ability to properly investigate and prosecute a case—leading to a weaker litigation approach, and ultimately lower recovery.

In contrast, there will be no limitations on contractors, who would be able to spend freely on attorney's fees and costs—ultimately giving contractors a significant unfair advantage over the homeowner.

A more practical solution is to create legislation allowing for fees and costs for construction defect claims

The stated goal of this legislation is to provide more funds in a settlement or judgement for building owners to conduct actual repairs on the property. **As discussed above, H.B. 981 would not achieve that result.**

Instead, this Court should look to the consumer protection statute HRS § 480-13 as a model, which entitles prevailing consumers to reasonable attorney's fees and costs. **Likewise, this Committee should amend this legislation to allow homeowners to obtain reasonable attorney's fees and costs when prevailing on construction defect claims.**

Thank you for your consideration.

Very Truly Yours,



Christopher K. Hikida

Kasdan Turner Thomson Booth LLLC

chikida@kasdandlawhawaii.com

LIPP SMITH LLP

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

February 18, 2025

Subject: OPPOSITION TO HB981

Dear Chair Tarnas, Vice Chair Poepoe, and Members of the Committee on
Judiciary & Hawaiian Affairs:

We hereby submit this testimony to **OPPOSE HB981-RELATING TO ATTORNEY FEES.**

We are lawyers who have served, and continue to serve, as Hawai'i State and Federal Court-appointed class action counsel for tens of thousands of Hawai'i homeowners. For the overwhelming majority of our clients, their homes are their biggest investments of their lives, and they reasonably expect those homes to be safe; to be free of construction defects, as builders routinely promise in warranties; and to last decades.

Unfortunately, though, Hawai'i builders do not always deliver what they promise in construction, honor their warranties, or step up to repair known defects - saddling homeowners with serious life and safety risks that are prohibitively expensive to repair and that diminish the values of their homes. In those circumstances, homeowners have nowhere else to turn except the courts.

In our class actions, courts have appointed us to represent homeowners against builders, and courts closely supervise our management and resolutions of the cases.

It goes without saying that Hawai'i's tropical environment, together with climate change, pose known, ever-increasing risks of dangerous winds, hurricanes, flooding, and fire. It also goes without saying that Hawai'i's environment can damage and destroy building products, including structural components, when builders use deficient materials and cut corners.

Roadblocks to deter and prevent homeowners from pursuing righteous claims for critical life and safety defects are anti-consumer and will endanger Hawai'i homeowners, their families, and their communities. The Lahaina wildfire tragedy is a horrific reminder that Hawai'i homeowners and residents are extremely vulnerable to powerful natural catastrophes.

HB981 will hurt, rather than help, homeowners whose homes suffer from construction defects. First, HB981 will disincentivize lawyers from taking on huge, long, difficult cases by capping attorney fees **and** costs at "twenty-five percent of the recovery amount." Second, HB981 will inhibit homeowners' ability to hire a lawyer of their choice at contingency fee market rates (i.e. generally a one-third contingency fee plus costs).

Ultimately, HB981 will shift the burden of dangerous construction defect to homeowners because those defects will not be investigated, litigated, or repaired - endangering their homeowners, their loved ones, and their families.

1. SB981 will disincentivize lawyers from taking on large, long, difficult cases by capping attorney fees and costs at "twenty-five percent of the recovery amount."

Large, complex, and difficult construction defect class actions take many years and significant investment of costs both to investigate and to litigate. In our experience, we have incurred incredible sums for expert and other necessary costs to investigate and prove construction defects and to fashion an appropriate repair protocol. This work includes destructive testing in the field with contractors as well as extensive work with structural engineers, metallurgists. Also in our experience, we have worked thousands of hours to investigate and litigate construction defects. This investment of resources is all while forgoing other work and without any guarantee of payment unless we achieve a successful outcome.

In our experience, our investment of resources - in terms of advanced costs **and** hours worked - has enabled us to achieve **thousands** of home repairs.

But capping attorney fees **together with** costs will result in attorney fees far less than twenty-five percent, discouraging attorneys from taking on these important cases because doing so is not financially viable. Moreover, including costs in the 25% cap will discourage attorneys from spending the kinds of costs that are typically required to investigate a defect, to litigate a defect, to prove a defect and, ultimately, to negotiate a favorable settlement.

One hypothetical illustrates the problem well: If a plaintiff attorney advanced \$500,000 in costs to settle a construction defect matter for \$2 million, that lawyer would recover \$0 in attorney fees. A cap on fees and costs set at 25% of any recovery will dissuade attorneys from taking on even the most righteous construction defect cases. In the end, HB981 will leave dangerous construction defects unaddressed, removing homeowners' redress through the courts from the equation.

2. SB981 will inhibit homeowners' ability to hire a lawyer of their choice at contingency fee market rates (i.e., generally a one-third contingency fee plus costs).

Generally, Hawai'i law favors an individual's ability to hire a lawyer of their choice and recognizes that contingency fee market rates are roughly about one-third of a recovery plus costs. See *Doe v. Doe*, 97 Haw. 160, 162 (describing a "one-third contingent fee" as "usual"), 163 & n.6 (noting contingency fee agreements are permissible, so long as the fee agreement is reasonable and comports with Hawaii Rules of Professional Conduct, Rule 1.5(c)) (2001). But HG981 would undermine these longstanding legal principles.

Lawyers experienced in large, difficult, complex, and lengthy construction defect class actions know how many resources such a case requires, including both significant cost advancement and significant attorney hours. These experienced attorneys who are most likely to achieve a positive resolution for homeowners will understand the great risk of taking on these matters and may ultimately decide not to take on solid construction defect matters.

This outcome will leave many construction defects across the state without any investigation, litigation, or repair - leaving homeowners with unsafe life and safety defects in their homes and allowing builders to develop homes without accountability.

3. SB981 will shift the burden of dangerous construction defects to homeowners because those defects will not be investigated, litigated, or repaired - endangering homeowners, their loved ones, and their families.

The stated purpose of HB981 is "to limit the attorneys' fees and costs in settlement agreements relating to, or actions brought as a result of, construction defects to ensure that plaintiffs can better afford the repair costs." And HB981 finds that "the plaintiff may end up in a worse position than before they initiated the lawsuit and publicly disclosed the existence of construction defects" because that property "may become significantly devalued, which will impact the plaintiff's ability to sell or refinance the property."

But HB981 sets up a false promise and leaves homeowners holding the bag. Again, capping attorney fees **and** costs at 25% of the recovery will prevent attorneys from being able to engage in fulsome investigation and litigation regarding construction defects, ultimately disincentivizing attorneys from taking on these cases. And homeowners will still own devalued homes that contain dangerous life and safety defects.

Thank you for considering our opposition to HB981.

Sincerely,

LIPPSMITH LLP

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

Graham LippSmith



February 19, 2025

Chair David A. Tarnas
Vice Chair Mahina Poepoe
Members of the House Committee on Judiciary & Hawaiian Affairs
Thirty-Third Legislature, Regular Session of 2025

Hearing date: February 19, 2025 at 2:00 PM

RE: HB 981 HD1 – RELATING TO ATTORNEYS' FEES

Aloha Chair Tarnas, Vice Chair Poepoe and Members of the Committee,

Mahalo for the opportunity to submit testimony on behalf of D.R. Horton Hawaii in **SUPPORT** of HB 981 – RELATING TO ATTORNEYS' FEES. D.R. Horton Hawaii is proud to be one of Hawaii's largest homebuilders, serving local families for more than 50 years. We specialize in providing affordable housing and first-time homebuyer opportunities across Oahu and the state. Through sustainable and quality home designs, including our Ho'opili master-planned community in East Kapolei, we remain committed to addressing Hawaii's critical housing needs.

D.R. Horton Hawaii supports HB 981 and other bills to ensure that homeowners are able to obtain a timely and efficient resolution of construction defects. Often times homeowners who pursue legal action for potential construction defects, especially those involved with class action lawsuits, may find that, after attorney's fees and other legal costs are deducted from their settlements or court-awarded damages, they are left without sufficient funds to make the necessary repairs. This situation not only undermines their ability to restore their property but may also leave them in a worse position than prior to the lawsuit as they don't have sufficient funds to make repairs and their homes may be significantly devalued due to the defects they have alleged, further compounding financial harm to the owner.

HB 981 would help to ensure that plaintiffs in construction defect cases retain enough of any settlement agreement or court award to repair their properties by limiting attorneys' fees. Specifically, HB 981 would require that the homeowners would keep 90% of the settlement agreement or court awarded damages so that they have sufficient funds to make the repairs. This would help to ensure that the homeowners have a viable path to seek resolution of



potential defects without the risk of excessive fees that could render their settlements insufficient for repairs. In short, by limiting attorneys' fees in this unique situation of construction defect claims, it incentivizes efficient legal representation, discourages unnecessary litigation, and ensures that settlements and court awards achieve their intended purpose. For these reasons, D.R. Horton Hawaii respectfully requests that the committee pass HB 981.

Mahalo for your consideration,

Lee Tokuhara
Vice President of Government and Community Relations
DR Horton Hawaii

HB-981-HD-1

Submitted on: 2/17/2025 3:18:34 PM

Testimony for JHA on 2/19/2025 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Dallas Walker	Individual	Oppose	Written Testimony Only

Comments:

Aloha Chair, Vice Chair and Committee Members,

I am an attorney here in Hawaii, and perhaps I can provide some insight. I have no self-interest here. I have not worked on any construction defect cases in years, and I am not a contingency fee attorney.

Please make no mistake. This bill hurts the "little guy" (the homeowner).

This bill is a "trojan horse" advanced by contractors and developers who seek to deter attorneys from representing homeowners on a contingency fee basis.

This will lead to fewer and fewer attorneys being willing to represent homeowners. Homeowners usually do not have the capital to take on a developer or contractor in litigation, so they must find an attorney who is willing to take the risk of being paid on a contingency fee basis (which means that the attorney may not be paid at all in the end). Because of the risk of not getting paid at all, contingency fee attorneys usually need to contract for a certain percentage of proceeds if they do prevail.

Additionally, there are already safeguards in place. The Hawaii Rules of Professional Conduct (the ethical rules governing lawyers) already regulate the parameters of contingency fees. These rules are already enforced by the Hawaii Supreme Court.

For these reasons, I would respectfully oppose HB 981 SD1.

Thank you,

Dallas Walker

William M. McKeon
215 Naniloa Drive
Wailuku, Hawaii 96793

February 18, 2025

House of Representatives - Committee on Judiciary & Hawaiian Affairs
The Thirty-Third Legislature, Regular Session of 2025

Testimony in Opposition to HB 981 RELATING TO ATTORNEYS' FEES

Dear Chair, Vice-Chair and Committee Members,

I **oppose** House Bill Number 981 because it favors wealthy mainland developers and builders at the expense of local homeowners, especially those in Lahaina.

I have lived full-time on Maui for the past 40 years with my Maui born and raised wife, a retired public-school teacher. As a resident and attorney working daily to help about 600 Lahaina fire victims rebuild their homes and community, I am concerned this bill will make it make it harder for homeowners to get construction defects fixed properly.

Following Hurricane Iniki in 1992, we saw the consequences of rushed and substandard construction in the aftermath of a disaster. Over 2,200 homes and buildings will be constructed in Lahaina in the coming years. Construction defects are, unfortunately, going to occur.

Local homeowners, who are already struggling, will bear the financial burden of this bill. Developers and builders have vast resources to avoid and delay accountability for construction defects. For example, D.R. Horton has a market capitalization of over \$40 billion (<https://companiesmarketcap.com/dr-horton/marketcap/>) and net income of \$4.8 billion (<https://www.macrotrends.net/stocks/charts/DHI/dr-horton/net-income>). There is no cap on the amount of money a developer can spend to delay and avoid correcting its mistakes. Local families can barely afford to buy a home, let alone engage in costly and protracted legal battles with developers to fix their home.

Hawaii's housing crisis is undeniable. UHERO's The Hawaii Housing Factbook 2024 (<https://uhero.hawaii.edu/the-hawaii-housing-factbook-2024/>) reports what we all know: Hawai'i has the highest land and construction costs in the nation. UHERO concludes that while these barriers are significant, they are compounded by various regulatory barriers, like permit delays, zoning laws, etc. These barriers need to be addressed; limiting an owner's right to hire counsel to level the playing field is not the answer.

A balanced bill would motivate developers and builders to promptly make full and complete repairs, instead of limiting the rights of homeowners. Owners turn to attorneys when developers fail to fix the defects in their homes. For the people of Lahaina and the state, please vote no on this bill.

Thank you for your time and consideration.

William M. McKeon

HB-981-HD-1

Submitted on: 2/18/2025 2:10:41 PM

Testimony for JHA on 2/19/2025 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Philip Nerney	Individual	Oppose	Written Testimony Only

Comments:

This anti-consumer bill reflects the coordinated effort of design and construction industry elements to prevent homeowners from holding them to account for design and construction defects. The Committee is respectfully requested to consider the consequences that would attend moving this bill forward.

An unequal playing field would result. Developer attorneys would be at liberty to spend freely in defense of meritorious claims. Owners would be denied access to contingency fee arrangements that are, effectively, essential in many situations.

HB 981 would ultimately increase the cost of housing, post-purchase, and lower the quality of life for Hawaii residents.