



February 3, 2025

Chair Scot Z. Matayoshi
Vice Chair Cory M. Chun
Members of the House Committee on Consumer
Protection & Commerce
Thirty-Third Legislature, Regular Session of 2025

Hearing date: February 5, 2025 at 2:00 PM

RE: **HB 981 – RELATING TO ATTORNEYS' FEES**

Aloha Chair Matayoshi, Vice Chair Chun 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 the intent of HB 981 and other bills to ensure that homeowners are able to obtain a timely and efficient resolution of construction defects.

By limiting the amount of attorneys' fees that can be deducted from any settlement in construction defect claims, it incentivizes efficient legal representation, discourages unnecessary litigation, and ensures that settlements 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

Submitted on: 2/3/2025 8:38:02 PM

Testimony for CPC on 2/5/2025 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Hawaii LECET	Hawaii Laborers & Employers Cooperation and Education Trust	Support	Written Testimony Only

Comments:

Hawaii LECET supports HB981.



February 4, 2025

The Honorable Scot Z. Matayoshi, Chair
The Honorable Cory M. Chun, Vice Chair
Members of the House Committee on Consumer Protection & Commerce
Hawaii State Capitol
415 South Beretania Street
Honolulu, HI 96813

SUBJECT: H.B. 981 RELATING TO ATTORNEYS' FEES
Hearing: Wednesday, February 5, 2025; 2:00 p.m.
Conference Room 329, State Capitol

Aloha Chair Matayoshi, Vice Chair Chun, and Members of the Committee,

Thank you for the opportunity to submit testimony in STRONG SUPPORT of HB981, Relating to Attorneys' Fees.

Gentry Homes is a kama'aina company that has been providing quality homes for Hawaii's working families for over 55 years. We strongly support efforts to create a fair and efficient process for addressing construction defect claims. HB981 is a step toward ensuring homeowners receive the relief they deserve and will help to ensure that the residential construction industry can continue to exist in Hawaii. By capping the percentage of attorneys' fees that can be deducted from construction defect settlements, legal fees will be lowered, thus reducing the overall cost of housing construction.

We urge your support of this measure. Mahalo for your consideration.

Sincerely,

GENTRY HOMES, LTD.

A handwritten signature in blue ink, appearing to read "Quentin Machida".

Quentin Machida
President and CEO



STANFORD CARR DEVELOPMENT, LLC

▪ February 4, 2025

The Honorable Scot Z. Matayoshi, Chair
The Honorable Cory M. Chun, Vice Chair
and Members of the House Committee on Consumer Protection & Commerce

Re: Testimony – HB981 Relating to Attorney’s Fees
Hearing: February 5, 2025 at 2:00 PM
Conference Room 329

Dear Chair Matayoshi, Vice Chair Chun, and Committee Members:

Stanford Carr Development (SCD) supports HB981 which proposes to limit attorney’s fees in settlement agreements relating to construction defects.

SCD has been building homes in Hawaii for over three decades, committed to developing quality residential communities that offer long-term value. We support HB981 and efforts to improve the process for addressing construction defect claims.

Attorney’s fees can reduce settlements by up to 35%, often leaving homeowners without sufficient resources for necessary repairs. By capping these fees, HB981 will help ensure homeowners can restore their homes and protect their value.

Thank you for the opportunity to express our support for this measure.

Respectfully,

A handwritten signature in black ink, appearing to read "Stanford S. Carr".

Stanford S. Carr



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

To: The Committee on Consumer Protection & Commerce
Re: **OPPOSITION** to Proposed Bill H.B. 981

Chairman Matayoshi, Vice Chairman Chun, 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. Instead, it would prevent many property owners without funds from getting access to a qualified attorney and prevent attorneys from funding litigation costs for homeowners in need; significantly reduce property owners chance at sufficient recovery by limiting their ability to properly work up their claims; and would make settlement nearly impossible in all construction defect cases.

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).

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

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

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.

We therefore generally work on a contingency basis, meaning that we cover all costs of the litigation and we recover a portion of the proceeds for costs and fees, if and only if, we 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 our clients 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.

We have an assortment of clients, from individual homeowners, Associations, and commercial owners with a wide variety of defects, claims, and individualized circumstances. A big part of our job is to work with our clients to determine a working arrangement that best suits their needs, and a litigation strategy to get them the best result.

It is important to note that our fee structure is part of our initial agreement with the client, and is typically reviewed by their general counsel in cases that involve Associations or other organizations. Where we represent individual homeowners in class actions, the fee award must be approved by a judge.

Throughout the litigation process, we thoroughly communicate with our clients, as required by the Hawaii ethics rules, consulting them on potential settlements and litigation strategy. Notably, during settlement discussions, we discuss settlement offers in depth, providing insight from consultants on what repairs can be made based on the settlement offers, taking into consideration attorney's fees and costs.

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 issues.

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 certain cases would not allow for any costs or fees, or cost or fees would be significantly limited. For example, cases where the potential amount of recovery is less than 90% of the Cost of Repair, such as:

- cases where the defendants don't have sufficient insurance;
- the claims are weak;
- or the property owner is a developer (and may be found partially liable for the defect).

In these circumstances, it is unlikely that the property owner will recover 90% of the cost of repair. This would mean that under H.B. 981, those homeowners would not be able to obtain legal representation, as there would be no proceeds to pay for costs or fees. H.B. 981 would dissuade qualified attorneys from taking on representation on a contingency basis for cases where there is a high likelihood that the property owner would not be able to recover more than 90% of the cost of repair.

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 could 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.

H.B. 981 would make settlement nearly impossible

As part of the mediation process, plaintiffs often provide a cost of repair for the defects claimed. Defendants will make offers to settle the claims, often significantly less than 90% of the value of the cost of repair determination.

Part of the decision-making process during settlement negotiations is to determine whether the settlement offer makes sense in light multiple factors, including of the risks of proceeding to trial, the immediate need for funds to repair defects, and the interest in resolving the case quickly.

However, if the settlement offer is less than the 90% of the Cost of Repair (as is most often the case), plaintiffs will be forced to bring all these cases to trial and settlement would be nearly impossible in construction defect cases.

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



LATE

**HAWAII STATE HOUSE OF REPRESENTATIVES
COMMITTEE ON CONSUMER PROTECTION AND COMMERCE
Conference Room 329 & Videoconference
State Capitol
2:00 PM**

FEBRUARY 5, 2025

Subject: HB 981 - RELATING TO ATTORNEYS FEES

Chair Matayoshi, Vice Chair Chun, and members of the Committee:

My name is Roseann Freitas, CEO 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 support of the intent HB 981, Relating to Attorney's Fees. This bill would limit the attorneys' fees in settlement agreements relating to, or actions brought as a result of, construction defects to ensure that plaintiffs receive an amount that is at least ninety per cent of the repair cost for the construction defect.

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.

We appreciate the opportunity to provide our comments on this matter.

HB-981

Submitted on: 2/3/2025 4:33:01 PM

Testimony for CPC on 2/5/2025 2:00:00 PM

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

Comments:

HB 981 seeks to regulate the practice of law. Rule 1.5(d), Hawaii Rules of Professional Conduct prescribes permitted contingency fees.

HB 981 would have the practical effect, if not the intended purpose, of freeing tortfeasors from responsibility for design and/or construction defects; because complex design/construction defect cases require great effort.

Qualified counsel would likely be unwilling to undertake such cases if adequate compensation was unavailable. Curiously, design professionals and contractors would not be limited in what they could pay their attorneys. That would be inequitable and it would disadvantage consumers who lack the funds to advance funds to bring meritorious cases.

HB 981 contains obvious potential equal protection issues.

Compare, *Fujioka v. Kam*, 55 Haw. 7, 514 P.2d 568 (Haw. 1973) and *Shibuya v. Architects Hawaii Ltd.*, 65 Haw. 26, 647 P.2d 276 (Haw. 1982) to HB 981. Those cases both invalidated prior iterations of HRS Section 657-8 on equal protection grounds. HB 981 has the same objective as was prohibited in those cases.

February 3, 2025

Chair Scot Z. Matayoshi
Vice Chair Cory M. Chun
Members of the House Committee on Consumer Protection & Commerce
Thirty-Third Legislature, Regular Session of 2025

Honorable Chair Matayoshi, Vice Chair Chun, and Members of the Committee:

Testimony in Support of HB981 – RELATING TO ATTORNEYS' FEES

Thank you very much for sponsoring HB981 – RELATING TO ATTORNEYS' FEES. I am a civil engineer in the construction industry and have been practicing in Hawaii for over 40 years. Too often I see homeowners being taken advantage by opportunistic attorneys and are left on the short end. Attorneys convince homeowners to participate in class-action lawsuits and end up taking much of the settlement claims, leaving homeowners with insufficient funds to perform the repairs that they originally requested.

I believe HB981 will be a positive measure to help homeowners obtain the money they need to perform the necessary repairs. That is why I support this measure and ask that the committee pass HB981.

Homeownership should be a happy and exciting moment in people's lives. Too often the legal process is protracted, and the needed repairs are left unresolved, leaving the homeowner in a stressful and unpleasant situation. When the process is completed, homeowners are left frustrated by not having enough money to complete the repairs needed. Repair costs sometimes increase due to the lengthy litigation period.

Thank you very much for your time and consideration.

Mahalo,



Greg Hiyakumoto, PE

HB-981

Submitted on: 2/4/2025 12:29:13 PM

Testimony for CPC on 2/5/2025 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Dallas Walker	Individual	Oppose	Remotely Via Zoom

Comments:

Aloha Chair, Vice Chair and Committee Members,

I am an attorney in Honolulu, Hawaii. I respectfully oppose this bill, as it operates to the detriment of the little guy (the homeowners).

My concern is that a court may find that the developer or contractor is 80% liable for the defect. In that case, the attorneys representing the homeowners will not get paid. Therefore, this will lead to fewer and fewer attorneys being willing to represent the homeowner.

Additionally, sometimes a homeowner must seek legal remedies against a contractor that is a fly-by-night company with no assets. I have been involved in a few cases like this. In that case, the homeowner may need to settle for what they can get and walk away. But under this bill, the attorney will not be paid. Again, fewer and fewer attorneys will be willing to represent the little guy in this situation.

So the overall net effect of this bill is to deter attorneys from representing homeowners. Meanwhile, there is no reciprocal limitation for attorneys on the construction side of the equation.

Thank you for your time.

Dallas H. Walker