

JAN 23 2009

A BILL FOR AN ACT

RELATING TO APPRAISALS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The purpose of this Act is to require a real
2 estate appraiser to comply with the Uniform Standards of
3 Professional Appraisal Practice when acting as an appraiser in
4 an arbitration to determine the fair market value of real
5 estate.

6 SECTION 2. Section 466K-4, Hawaii Revised Statutes, is
7 amended by amending subsection (a) to read as follows:

8 "(a) No person may practice as a real estate appraiser in
9 this State unless that person has been licensed or certified to
10 practice in accordance with this chapter and rules adopted by
11 the director of commerce and consumer affairs pursuant to
12 chapter 91.

13 All real estate appraisers who are licensed or certified to
14 practice in this State shall comply with the current uniform
15 standards of professional appraisal practice approved by the
16 director when performing appraisals in connection with a
17 federally or non-federally related real estate transaction.



1 A real estate appraiser shall comply with the Uniform
2 Standards of Professional Appraisal Practice when acting as an
3 appraiser in an arbitration to determine the fair market value
4 of real estate."

5 SECTION 3. New statutory material is underscored.

6 SECTION 4. This Act shall take effect upon its approval.

7

INTRODUCED BY: Suzanne Chun Oakland

David Yde
Ron Dun
Carol Fukumaya
Norman Sakonji



Report Title:

Real Estate Appraisal Arbitration; Uniform Standards of Professional Appraisal Practice

Description:

Requires a real estate appraiser to comply with the Uniform Standards of Professional Appraisal Practice when acting as an appraiser in an arbitration to determine the fair market value of real estate.





LINDA LINGLE
GOVERNOR
JAMES R. AIONA, JR.
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
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LAWRENCE M. REIFURTH
DIRECTOR
RONALD BOYER
DEPUTY DIRECTOR

**PRESENTATION OF THE
PROFESSIONAL AND VOCATIONAL LICENSING DIVISION**

TO THE SENATE COMMITTEE ON
COMMERCE AND CONSUMER PROTECTION

TWENTY-FIFTH LEGISLATURE
Regular Session of 2009

Thursday, February 26, 2009
8:30 a.m.

TESTIMONY ON SENATE BILL NO. 771, RELATING TO APPRAISALS.

TO THE HONORABLE ROSALYN H. BAKER, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Alan Taniguchi, Executive Officer for the Real Estate Appraiser Program, Professional and Vocational Licensing Division ("PVLD") of the Department of Commerce and Consumer Affairs ("Department"). Thank you for the opportunity to present testimony on Senate Bill No. 771, Relating to Appraisals. The Department opposes this bill.

This bill seeks to require a real estate appraiser to comply with the Uniform Standards of Appraisal Practice (USPAP) when acting as an appraiser in an arbitration to determine the fair market value of real estate.

Testimony on Senate Bill No. 771
Thursday, February 26, 2009
Page 2

When a real estate appraiser is appointed as an arbitrator, the appraiser is acting as the arbitrator. Usually, both sides hire their own appraisers as expert witnesses. These expert witnesses are required by state statute to follow USPAP if they perform an appraisal. The arbitrator listens to all the testimony and reviews the evidence presented. The arbitrator does not perform an appraisal. For these reasons, we feel that this bill is unnecessary.

Thank you for the opportunity to testify and we ask that this bill be held.



Hawaii Council of Associations of Apartment Owners

P.O. Box 726, Aiea, HI, 96701
Phone: 485-8282 Fax: 485-8282
Email: HCAAO@hawaii.rr.com

February 22, 2009

Sen. Rosalyn Baker, Chair
Sen. David Ige, Vice-Chair
Senate Committee on Commerce and Consumer Protection

RE: TESTIMONY IN SUPPORT OF SB 771 RE APPRAISALS
Hearing: Thursday, Feb. 26, 2009, 8:30 a.m. Conf. Rm. #229

Chair Baker, Vice-Chair Ige and Members of the Committee:

I am Jane Sugimura, President of the Hawaii Council of Associations of Apartment Owners (HCAAO).

We support the intent and purpose of this bill, which would require appraisers when acting as arbitrators to determine the fair rental value of a ground lease as defined in the bill, comply with USPAP, and urge you to pass it out of committee with amendments.

USPAP requires appraisers to consider the existing uses of the subject and adjacent properties and the character of the neighborhood in reaching conclusions about value. When they do not comply with USPAP standard and use a highest and best use standard, the value is artificially inflated which results in a value that exceeds fair rental value, which undermines the process in the lease that was clearly intended to determine fair rental values.

I am informed that when appraisers are selected to act as arbitrators in a rent renegotiation of a long-term ground lease, some if not all, do not feel that they are bound by USPAP because when acting as an arbitrator, they are not doing appraisal work. That position should not be tolerated and appraisers should be bound to comply with USPAP in any work they do relating to determining the value of real property whether their designation is an "appraiser" or an "arbitrator".

I suggest the following language for clarification:

1. Revise the last line of the bill at the bottom of page 1 by replacing "the value or rental of real estate" with "the fair rental value of a long-term ground lease".

2. By adding a new subsection "(b)" to read:

(b) For purposes of this section, "long-term ground lease" means any ground lease of real property:

(1) Situated in the State;

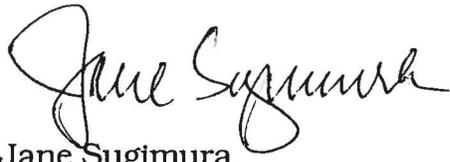
(2) Zoned by a county for commercial and/or industrial use;

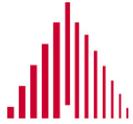
(3) That is subject to a lease with a term of ten years or more and an unexpired term of five years or more; and

(4) Where the lessor is the owner, directly or indirectly of fifty thousand square feet or more of industrial and/or commercial property in the State.

For the purposes of this section, "lease" means a conveyance leasing privately owned land by a fee simple owner as lessor, or by a lessee as sublessor, to any person, for a term exceeding ten years in consideration of a return of rent or other recompense."

Thank you for the opportunity to testify.


Jane Sugimura
President



**Appraisal
Institute™**

*Professionals Providing
Real Estate Solutions*

Hawaii Chapter

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February 24, 2009

Senator Rosalyn H. Baker, Chair
Senator David Y. Ige, Vice-Chair
Commerce and Consumer Protection Committee
Ted Yamamura, Vice President
The Hawaii Chapter of the Appraisal Institute
(808) 270-0604
Thursday, February 26, 2009

Testimony against SB 771, Relating to Appraisals

The Hawaii Chapter of the Appraisal Institute is part of an international organization of professional real estate appraisers with nearly 24,000 members and 91 chapters throughout the world. Its mission is to advance professionalism and ethics, global standards, methodologies, and practices through the professional development of property economics worldwide.

We speak against SB 771, Relating to Appraisals, which would require a real estate appraiser to comply with the Uniform Standards of Professional Appraisal Practice when acting as an appraiser or arbitrator in an arbitration to determine the value or rental of real estate.

“Arbitration” is not the same as “appraisal”. “Appraisal” is the process of estimating value. For real estate appraisals, USPAP provides generally accepted appraisal standards for 1) the process of analyzing information and arriving at a value conclusion and 2) reporting the appraisal process and value conclusion.

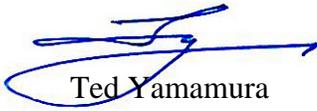
“Arbitration” is the last resort in dispute resolution. In arbitration the parties submit their cases to an impartial, disinterested person or panel for a final and binding decision.

An arbitrator does not serve the same function as an appraiser. Appraisers may act as arbitrators. However, when they are acting as arbitrators, they are undertaking an arbitration process and not an appraisal practice

In *Wong v. Chalmers*, the federal district court concluded that the real estate appraisers, when acting as arbitrators, are not engaging in an appraisal function. As a result, the court rejected a claim that an arbitration award should be vacated because the arbitrators failed to comply with USPAP. The court stated:

As an initial matter, the court rejects KUA'S argument that Defendants disregarded the law by not following professional standards for appraisers. The court finds that these guidelines do not govern the arbitration proceeding because here Hallstrom, Hulten and Vernon were acting as arbitrators, not as appraisers. The fact that the arbitrators were required to be licensed appraisers is immaterial here¹.

We urge the Committee to deny the passage of SB 771. Thank you for this opportunity to testify.



Ted Yamamura
Vice President

¹ *Wong v. John F. Chalmers 1990 Revocable Trust*, Civil No. 94-811 DAE (D. Haw., Jan 24, 1996).

Date: February 26, 2009 State Capitol Room 229, 0830 Hours

**For: COMMERCE AND CONSUMER PROTECTION COMMITTEE
of the Senate, Twenty-fifth Legislature, 2009, State of Hawaii.**

**RE: SB771 – Relating to mandating application of Uniform Standards of
Professional Appraisal Practice (USPAP) when licensed Appraisers are
Functioning as Arbitrators.**

.TESTIMONY SUPPORTING SB 771

TO: The Senate Commerce and Consumer Protection Committee, State of Hawaii

Senator Rosalyn H. Baker, Chair

Senator David Y. Ing, Vice Chair

**Senators Will Espero, Josh Green, Lea Ihara, Jr., Norman Sakamoto and Fred Hemmings,
Committee Members**

Most Honorable Chair Rosalyn Baker, Senator Ing and Committee Members:

**Please vote unanimously in favor of this Bill today February 26, 2009 together with a
proposed amendment hereunder to effectively enforce ACT 180 as intended.**

SB 771 is needed and necessary for the protection of arbitrary decisions involving real estate appraisals issued by real estate appraisers under the guise of “Arbitration.” Further, it is also eminently required that HRS466-k should be corrected to institute the true meaning and intent of the implementation of the Uniform Standards of Professional Appraisal Practice (USPAP) in the State of Hawaii.

For background there was a huge “Savings and Loan Scandal” in 1988 that was perpetrated by dishonest appraisers who falsely valued properties and then colluded with mortgage borrowers to obtain funds against the false worth of the properties. The end result was that Congress had to bail out the Savings and Loan Institutions using millions of dollars from public funds.

As a result the US Congress issued Title XI of the Financial Institutions Recovery, Reform, and Enforcement Act of 1989 which mandated that all property appraisals that involved federally funded property transactions would be performed within the **Uniform Standards of Professional Appraisal Practice (USPAP)**.

So now history repeats itself. These so-called ‘toxic’ mortgages in the current credit crunch at the present time appear to be another like issue which is not yet publicly pursued by the administration, except by the FBI. (Evasion of Federal Law)

In Hawaii the financial institutions and land owners vigorously avoided the practice and it took TEN more years until 1998 when the State Legislature finally agreed that we, the consumers, should be protected also.

This resulted in ACT 180 signed by Governor Cayetano into law and promulgated into law as HRS 466-k.

The reticency and open aversion to the law can be found in the law itself. The program USPAP mentioned above is belittled and quoted in small letters as a sentence in HRS 466 and it construes that it is the Director of DCCA only that decides upon the rules that govern the mandates under which real estate appraisers are required to perform. See comment by Appraisal Subcommittee, dated July 18, 2005 which states exactly the same position and quote: "It appears that the Director never approved any "current uniform standards of professional appraisal practice"" and further provides that "These inconsistencies between the Statute, regulations, and practice could expose the State's enforcement program to successful legal challenge."

(EXHIBIT A)

In this regard I am actively following the implementation of USPAP nationwide and I have compiled a list of public revocations and suspensions of real estate appraisers as published in communications from the Appraisal Subcommittee of Congress that I receive daily. Over a 16-month period and extracted from 232 individual e-mails from the congressional subcommittee, this list now names more than 800 delinquent appraisers nationwide with absolutely none ever from Hawaii. For the record I have only been able to find two such actions in the State of Hawaii over the past 20 years, which speaks for itself.

In the autumn of 2008 there were some 847 appraisers listed by the DCCA in the National Register as mostly compliant with the required Core Curriculum of Property Appraiser Qualification Criteria effective January 1, 2008. This is a farce since it was never implemented. A copy of these criteria is attached. (EXHIBIT B)

Having thus observed over a period of time of what I construed as irregularities, I sent a detailed letter to DCCA and laid out the land as I perceived it. A copy is attached hereto for reference, (EXHIBIT C)

DCCA answered my concerns in a roundabout way in a short, innocuous letter dated May 28, 2008 attached hereto (EXHIBIT D)

My recommendation for this committee is simple. The original wording of ACT 180 should be inserted correctly as the intent was for protection of the consumers and therefore to read thus:

From as published:

All real estate appraisers who are licensed or certified to practice in this State shall comply with the current uniform standards of professional practice as approved by the director when performing appraisals in connection with a federally or non-federally related real estate transaction.

To as corrected:

All real estate appraisers who are licensed or certified to practice in this State shall comply with the current Uniform Standards of Professional Practice (USPAP) when performing appraisals in connection with a federally or non-federally related real estate transaction.

It follows naturally that since the State has been so lax to enforce the provisions of USPAP and apparently appraisers are allowed to construe whatever their fancy and in accordance with their expected recompense, 'arbitrations' are totally without value for the consumers since the current attitudes by the courts are, to quote: 'the appraisers know what to do' — Therefore the appraiser/arbitrators should be required to follow accepted appraisal procedures and document these properly in accordance.

In reality the requirement of SB 771 to follow USPAP truly closes a legal loophole that has long been available to the seedier segments of the legal profession.

I am a resident of Kailua since 1966 and have been publicly elected to the Kailua Neighborhood Board for the past 16 consecutive years and I also have a personal experience with an arbitration that cost me hundreds of thousands of dollars in lost equity, the breakup of my family, the loss of the family home, and the death of my old blind dog. Hence my support for SB 711.

Respectfully submitted,



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25 Aulike Street, Kailua
96734-2748

Attachments:

Exhibit A. Ltr Field Report, Appraisal Subcommittee of Congress, dated July 18, 2005

Exhibit B. Core Curriculum of Property Appraiser Qualification Criteria effective January 1, 2008.

Exhibit C. Ltr to DCCA, subject: Applicability of Uniform Standards of Professional Appraisal Practice in the State of Hawaii under the auspices of HRS 466-k, dated May 14, 2008.

Exhibit D. Ltr Answer, Real Estate Appraiser Program, State of Hawaii, May 27, 2008

□ □ □ □ □ □

Appraisal Subcommittee

Federal Financial Institutions Examination Council

July 18, 2005

Ms. Kathryn S. Matayoshi, Director
Department of Commerce and Consumer Affairs
PO Box 3469
Honolulu, HI 96801

Dear Ms. Matayoshi:

Thank you for the Department of Commerce and Consumer Affairs' ("Department") cooperation and assistance in the May 31–June 1, 2005 Appraisal Subcommittee ("ASC") review of Hawaii's appraiser regulatory program ("Program"). Based on that review, Hawaii functions in a manner generally consistent with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, ("Title XI"). As discussed below, we identified deficiencies in two areas that need changes in your regulations.

- **The Department needs to update its regulations to reflect changes in Appraiser Qualifications Board ("AQB") criteria.**

While Hawaii, in practice, follows current AQB criteria, it still has not formally amended its regulations to reflect the January 2003 AQB criteria changes. We notified the Department of this concern in our July 10, 2002 field review letter. In its August 29, 2002 response, the Department represented that it was "currently working on amendments . . . and will implement the necessary changes." The Department failed to do so. While on site, Department staff provided us a copy of draft proposed regulations that would incorporate the required text regarding, among other things, the 15-hour National USPAP Course, the 7-hour National USPAP Update Course, and the use of AQB-certified USPAP instructors.

To finally cure this deficiency, the Department needs (1) to complete the adoption of its rule changes to incorporate the January 1, 2003 criteria changes; (2) to keep us informed of its status; and (3) to forward to us a copy of the regulations when they are adopted.

Also, the Department has not yet begun to address the regulatory changes that will be needed to implement the AQB's 2008 criteria changes that become effective on January 1, 2008. We strongly urge the Department to begin the process of determining how and when it will implement those criteria changes as regulatory changes take some time to accomplish.

- **The regulations do not adequately reference the Uniform Standards of Professional Appraisal Practice ("USPAP").**

Section 466K-4(a) of Hawaii's revised statutes for real estate appraisers ("Statute") states that all State credentialed appraisers "shall comply with the current uniform standards of professional appraisal practice approved by the director when performing appraisals in connection with a federally or non-federally related transaction." Section 16-114-88(a) of Hawaii's Administrative Rules attempts to implement this provision for federally related

A

transactions by stating that those standards are “the minimum appraisal standards of the appropriate federal financial institutions regulatory agency.” Under § 16-114-106(4) of the Rules, an appraiser who fails to comply with the agencies’ regulations may have his or her credential revoked, suspended, not renewed, or denied.

It appears that the Director never approved any “current uniform standards of professional appraisal practice” for appraisals in connection with non-federally related transactions. Therefore, no legally enforceable practice standards appear to exist concerning appraisals in non-federally related transactions. Nevertheless, Hawaii, in practice, applies USPAP to appraisals performed in federally related and non-federally related transactions. These inconsistencies between the Statute, regulations, and practice could expose the State’s enforcement program to successful legal challenge.

In accordance with Title XI and ASC Policy Statement 3, real estate appraisals generally must be performed in accordance with generally accepted appraisal standards as evidenced by the appraisal standards promulgated by the Appraisal Standards Board, *i.e.*, USPAP. That Policy Statement also requires States to either incorporate USPAP by general reference or take all necessary steps to ensure that the most current version of USPAP is incorporated by specific reference by the date that version becomes effective.

To eliminate potential enforcement difficulties, Hawaii needs to fully implement § 466K-4(a) of its Statute and amend its regulations to conform to ASC Policy Statement 3.

Please respond to our findings and recommendations within 60 days from your receipt of this letter. Until the expiration of that period or the receipt of your response, we consider this field review to be an open matter. After receiving your response or the expiration of the 60-day response period, whichever is earlier, this letter, your response and any other correspondence between you and the ASC regarding this field review become releasable to the public under the Freedom of Information Act and will be available on our Web site.

Please contact us if you have further questions.

Sincerely,

Virginia M. Gibbs
Chairman

cc: Alan Taniguchi, Executive Officer

REQUIRED CORE CURRICULUM EFFECTIVE JANUARY 1, 2008

TRAINEE

BASIC APPRAISAL PRINCIPLES	30 HOURS
BASIC APPRAISAL PROCEDURES	30 HOURS
THE 15-HOUR NATIONAL USPAP COURSE OR ITS EQUIVALENT	15 HOURS

TRAINEE EDUCATION REQUIREMENTS 75 HOURS

LICENSED

BASIC APPRAISAL PRINCIPLES	30 HOURS
BASIC APPRAISAL PROCEDURES	30 HOURS
THE 15-HOUR NATIONAL USPAP COURSE OR ITS EQUIVALENT	15 HOURS
RESIDENTIAL MARKET ANALYSIS AND HIGHEST AND BEST USE	15 HOURS
RESIDENTIAL APPRAISER SITE VALUATION AND COST APPROACH	15 HOURS
RESIDENTIAL SALES COMPARISON AND INCOME APPROACHES	30 HOURS
RESIDENTIAL REPORT WRITING AND CASE STUDIES	15 HOURS

LICENSED EDUCATION REQUIREMENTS 150 HOURS



B

CERTIFIED RESIDENTIAL

BASIC APPRAISAL PRINCIPLES	30 HOURS
BASIC APPRAISAL PROCEDURES	30 HOURS
THE 15-HOUR NATIONAL USPAP COURSE OR ITS EQUIVALENT	15 HOURS
RESIDENTIAL MARKET ANALYSIS AND HIGHEST AND BEST USE	15 HOURS
RESIDENTIAL APPRAISER SITE VALUATION AND COST APPROACH	15 HOURS
RESIDENTIAL SALES COMPARISON AND INCOME APPROACHES	30 HOURS
RESIDENTIAL REPORT WRITING AND CASE STUDIES	15 HOURS
STATISTICS, MODELING AND FINANCE	15 HOURS
ADVANCED RESIDENTIAL APPLICATIONS AND CASE STUDIES	15 HOURS
APPRAISAL SUBJECT MATTER ELECTIVES.	20 HOURS
(May include hours over minimum shown above in other modules)	

CERTIFIED RESIDENTIAL 200 HOURS

CERTIFIED GENERAL

BASIC APPRAISAL PRINCIPLES	30 HOURS
BASIC APPRAISAL PROCEDURES	30 HOURS
THE 15-HOUR NATIONAL USPAP COURSE OR ITS EQUIVALENT	15 HOURS
GENERAL APPRAISER MARKET ANALYSIS AND HIGHEST AND BEST USE	30 HOURS
STATISTICS, MODELING AND FINANCE	15 HOURS
GENERAL APPRAISER SALES COMPARISON APPROACH	30 HOURS
GENERAL APPRAISER SITE VALUATION AND COST APPROACH	30 HOURS
GENERAL APPRAISER INCOME APPROACH	60 HOURS
GENERAL APPRAISER REPORT WRITING AND CASE STUDIES	30 HOURS
APPRAISAL SUBJECT MATTER ELECTIVES.	30 HOURS
(May include hours over minimum shown above in other modules)	

CERTIFIED GENERAL 300 HOURS

Kailua, May14, 2008

Mr. Lawrence M. Reifurth, Director
Department of Commerce and Consumer Affairs
335 Merchant Street
Honolulu, 96809

Subject: Applicability of Uniform Standards of Professional Appraisal Practice (USPAP) in the State of Hawaii under the auspices of HRS 466K

Dear Mr. Reifurth:

Thank you for your March 20, 2008 responses to my March 10, 2008 regarding my concerns about the implementation of the Uniform Standards of Professional Appraisal Practice (USPAP) in Hawaii as administered by your department.

In your letter you quote Hawaii Administrative Rule (HAR) §16-114-88(a) as it applies to federal financial institutions as interpreted by your department and not necessarily in accord with the Appraisal Sub Committee of Congress or, for that matter my person.

We are now 20 years after the initial establishment of USPAP in 1988 as a result of fraud involving millions of dollars lost by financial institutions and the public due to fraudulent appraisal practices.

In 1998, 10 years ago, at the insistence of the public, the State Legislature invoked HRS 466 and the reason was given as a measure for protecting the consumers. This particular statute has irked the financial conglomerate to no end and the following excerpt clearly shows that the intent of the law was circumvented by the State in paraphrasing USPAP in small letters and without indication or reference to the actual program. The public thus remains totally uninformed of the benefits of USPAP, and your department to the best of my knowledge has never publicly informed the public or provided guidance to the public.

-----Quote-----

§466K-4 Practice as a real estate appraiser; uniform standards. (a) No person may practice as a real estate appraiser in this State unless that person has been licensed or certified to practice in accordance with this chapter and rules adopted by the director of commerce and consumer affairs pursuant to chapter 91. All real estate appraisers who are licensed or certified to practice in this State shall comply with the **current uniform standards of professional appraisal practice approved by the director** when performing appraisals in connection with a federally or non-federally related real estate transaction.

-----End Quote-----

As far as your department being required to report the commercial companies that the individual appraisers are related to on the National Registry, you state that Hawaii issues appraiser licenses to individuals and not entities. This is perhaps true in a sense, but if you go to the National Registry and check other States of the Union, you will find that many States list the commercial associations openly and freely. The Appraisal Institute Hawaii used to list and tout their commercial affiliation and membership freely, however since the FBI started investigations into mortgage fraud, this openness has changed to where one may only obtain specific information by name or affiliation.

The following report from the State Auditor clearly addresses the Uniform Standards of Professional Appraisal Practice (USPAP) However; as mentioned above, the end result in HRS 466 was deliberately belittled by obscuring and misrepresenting the program, and I firmly believe that this was done on purpose to mislead the public.

-----Start of Quote-----

Report No. 98-13

2. Summary

The primary work of a real estate appraiser is to estimate accurately and impartially the value of particular pieces of real property, including both the land and any improvements such as a house. We analyzed the need to expand Hawaii's existing regulation of real estate appraisers and appraisals. We concluded that expanded regulation is not necessary but would foster consistency in regulation.

Under Chapter 466K, Hawaii Revised Statutes, and related rules, real estate appraisals used in connection with federally related transactions (such as loans by federally regulated financial institutions) generally must be performed in accordance with the national Uniform Standards of Professional Appraisal Practice (commonly referred to as USPAP) by persons licensed or certified as real estate appraisers by the Department of Commerce and Consumer Affairs. The existing regulatory program in the department was enacted to comply with federal banking law that resulted from many cases of abuse nationally in which substandard or fraudulent appraisals performed without sufficient independence contributed to billions of dollars in losses and failures of lending institutions.

As requested in House Concurrent Resolution No. 165 of the 1997 Regular Session, we studied the need to expand Hawaii's regulation to also include real estate appraisers and appraisals involved in non-federally related transactions as proposed in House Bill No. 566 of the 1997 session

We found that expanding regulation to include non-federally related transactions is not necessary under federal law or applicable sunrise criteria from Section 26H-2, HRS, of the Hawaii Regulatory Licensing Reform Act. In Hawaii, negotiations to establish property values for lease-rent negotiations or lease-to-fee conversions—which tend not to be federally related transactions—have been marked by controversy centered on the appraised values. Proponents of expanded regulation claim it would reduce wide variations among valuations. However, we could not identify a clear harm to consumers that (1) resulted from a lack of skill by appraisers and (2) would be cured by requiring mandatory licensing and use of the Uniform Standards. The standards, issued by the Appraisal Standards Board of the Appraisal Foundation, are intended to reflect the current standards of the appraisal profession. The standards specify procedures for performing and communicating an appraisal. But there appears to be ample room in the standards and their application to result in very different valuations among appraisers.

However, we also found that expanded regulation would have the advantage of establishing a common baseline for conducting and reporting appraisals, which could reduce some of the confusion and controversy about the appraisal process and have other benefits. Many states (22) cover both federally and non-federally related transactions.

The costs of expanded regulation are uncertain. Examples of costs include the costs of newly regulated appraisers preparing for licensure, and possible increases in charges for performing appraisals for non-federally related transactions. The Legislature needs to consider the costs and benefits of expanded regulation, as well as legal issues in the areas of exemptions, retroactivity, and arbitration. For example, good arguments can be made for excluding tax-assessment appraisers from regulation, but exempting them could undermine the goal of establishing a common baseline for all appraisals.

Recommendations and Response

Primarily for consistency in regulation, **we recommend that the Legislature strongly consider passing House Bill No. 566 requiring appraisals in both federally and non-federally related real estate transactions to be performed by state-licensed or state certified appraisers following the Uniform Standards of Professional Appraisal Practice.** In weighing whether to expand regulation of real estate appraisers and appraisals in this manner—and whether to grant exemptions—the Legislature may wish to consider the costs, benefits, and legal issues that are summarized in our report.

The Department of Commerce and Consumer Affairs elected not to submit a response to a draft of this report.

-----End of Quote-----

The last line clearly indicates the reticence of implementation by DCCA snubbing to submit a response on a draft of the report. Ten Years later someone should wonder today what the intent and course of the DCCA entails because it is clearly not administered for the benefit of both

financial and public interest, and the current setup of the Appraisal Advisory Committee is reminiscent of a secluded country club for members only

It is clear that every effort is being extended to reduce the USPAP program to the status of being merely an “administrative procedure” which flies in the face of truth.

It is even more disheartening to have discovered that the new avenue for misguiding the public is to call for arbitration and then call this a jurisdictional exception and thereby allowing licensed appraisers to circumvent the provisions of USPAP by rendering binding arbitration which is most difficult to overcome in Hawaii. The state courts seem to avoid the question of USPAP when in reality the legal application in civilized states of the union effectively supports the purpose of metering justice to the financial institutions as well as protecting the public.

Recalling the earlier days of the fight to implement USPAP to be applied equally for all entities brought up the question of Leasehold Renegotiation as well as Lease-to-Fee transactions. The cogent issues among the financial institutions land owner and mortgage brokers were quite simple because of their choice to vacillate the methods of establishing “Value” whichever are to be the most inflated based on either “Ground Value” or “Income Stream”

The current legal procedure of arbitration excuses Appraiser/Arbitrators to provide their actual method of evaluation by allowing them conveniently to assign a single value to a single sheet of conclusion and that is how the buck stops. Attempting to reverse judgements in the courts by applying an industry standard is futile in Hawaii. The following decision by the Intermediate Court of Appeals speaks for itself and as far as USPAP is concerned I have emphasized the opinion by the court by bolding the passages:

----QUOTE----

NO. 25358

2. IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

IN THE MATTER OF APPOINTMENT OF AN ARBITRATOR FOR THE
DISPUTE BETWEEN RESIDUARY LIMITED PARTNERSHIP, BY
KANEOHE RANCH COMPANY, LIMITED, ITS GENERAL PARTNER,
Petitioner-Appellee, v. KNUD LINDGARD and COLETTE
ANDREE LINDGARD, Respondents-Appellants

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(S.P. No. 01-1-0204)

SUMMARY DISPOSITION ORDER
(By: Watanabe, Acting C.J., Lim, and Foley, JJ.)

Respondents-Appellants Knud Lindgard and Colette Andree Lindgard (the Lindgards) appeal: (1) the order entered by the Circuit Court of the First Circuit (the circuit court)⁽¹⁾ on August 28, 2002 that (a) confirmed an April 17, 2002 award by a three-appraiser arbitration panel in favor of Petitioner-Appellee Residuary Limited Partnership, by Kaneohe Ranch Company, Limited, its general partner (RLP), and (b) denied the Lindgards' motion to vacate the same arbitration award (the August 28, 2002 Order); and (2) the Final Judgment entered by the circuit court on August 28, 2002 in favor of RLP and against the Lindgards, following the entry of the August 28, 2002 Order. The arbitration award determined that for the period from July 1, 1996 to and including December 31, 2012, the Lindgards owed RLP \$7,000 net annual ground lease rent for property in Kailua, Oahu that they were leasing from RLP.

The Lindgards' arguments on appeal revolve around the composition of the arbitration panel that determined the revised lease amount. Specifically, the Lindgards contend that the circuit court erred:

- (1) In disqualifying Charles A. Shipman, Jr. (Shipman) as the Lindgards' choice of arbitrator because "the undisputed evidence was that Shipman would adhere to the impartiality principals [sic] embodied in [the Uniform Standards of Professional Appraisal Practice]";
- (2) In replacing Shipman with Paul D. Cool, MAI (Cool) because Cool was proposed by RLP, "foisted upon the Lindgards as their choice[.]" and "had been specifically rejected as a choice for the neutral third arbitrator because of his work for RLP";
- (3) In granting RLP's motion to confirm the arbitration award and in denying the Lindgards' motion to vacate the arbitration award because "the award was infected with the evident partiality of the arbitration panel and because the Lindgards had no say in the selection of anyone on the panel"; and

(4) In granting the motion to confirm the arbitration award and in denying the motion to vacate the arbitration award because "the award clearly violated the explicit, well-defined and dominant public policy encompassed in Chapter 466K of the Hawaii Revised Statutes" concerning the standards to be applied by real estate appraisers in this State.

Our review of the record indicates that the Lindgards were provided with multiple opportunities to select an impartial appraiser of their choice for the arbitration panel but repeatedly failed to do so. They also directed Shipman, the appraiser they had appointed to the panel, to complete an appraisal of the property for their own use, thereby calling into question Shipman's impartiality and prompting the circuit court to disqualify Shipman from the panel. Under the terms of the lease documents between RLP and the Lindgards, the circuit court was required to select an appraiser if a party failed to do so. The Lindgards should not now be heard to complain about the composition of a panel that they did everything in their power to delay the convening of.

Accordingly, the Lindgards' arguments have no merit, and we affirm the circuit court's August 28, 2002 Order and August 28, 2002 Final Judgment.

DATED: Honolulu, Hawai'i, March 18, 2005.

Knud Lindgard and Colette
Andree Lindgard, respondents-
appellants, pro se (Carl H.
Osaki for them on the briefs).

Rosemary T. Fazio (Ashford &
Wriston, of counsel) on the
brief for petitioner-appellee.

-----UNQUOTE-----

Point in question is whether the public is served by blindly assigning Appraiser/ Arbitrators without even requiring them to be abiding the code of ethics provisions in USPAP in regards to conflict of interest and statement of prior commercial contact and relations. For an example Mr. Paul Cool, a member of the Appraisal Committee was assigned by the court to be representing the appraisal for me. Mr. Cool nowhere advised the court that his firm provides "Real Estate Counseling" for the opposing party KANEOHE Ranch, disguised at that time as "Residual Limited Partnership."

Likewise the Appraiser that appeared as an appraiser of value, Mr. James Hailstorm, provided a speech of general values in the area. Mr. Hallstrom refrained from providing any evaluation although I had specifically called him and asked whether he was preparing an appraisal

in accordance with USPAP, to which he affirmed in positive.

What must be said is simple. I tried to enlist an appraiser from all the entries available in the yellow pages in the phone book. ALL declined to make an appraisal under USPAP because there was a question of Safety and Health involved as far as the property was concerned.

In the end it was my stupidity to trust the judgement of Harlin Young, Paul Cool and Gerald Tsutsui. It was even more stupid to accept the lie by James Hallstrom that he was preparing an appraisal according to USPAP.

As a matter of fact improper coercion is not only a peculiar State of Hawaii problem. It cuts across state lines in the following petition listed at the indicated URL.

Concerned Real Estate Appraisers from across America

Submit the attached petition (Which was posted on appraisersforum.com):

To: Mr. Ben Henson - Executive Director
Appraisal Subcommittee (ASC)
Federal Financial Institutions Examination Council
email: benh1@asc.gov

cc: Other state or federal agencies with authority in the following matter

"The ASC's mission is to ensure that real estate appraisers, who perform appraisals in real estate transactions that could expose the United States government to financial loss, are sufficiently trained and tested to assure competency and independent judgment according to uniform high professional standards and ethics." From the ASC website.

The concern of this petition has to do with our "independent judgment" in performing real estate appraisals. We, the undersigned, represent a large number of licensed and certified real estate appraisers in the United States, who seek your assistance in solving a problem facing us on a daily basis. Lenders (meaning any and all of the following: banks, savings and loans, mortgage brokers, credit unions and loan officers in general; not to mention real estate agents) have individuals within their ranks, who, as a normal course of business, apply pressure on appraisers to hit or exceed a predetermined value.

This pressure comes in many forms and includes the following:

- the withholding of business if we refuse to inflate values,
- the withholding of business if we refuse to guarantee a predetermined value,
- the withholding of business if we refuse to ignore deficiencies in the property,
- refusing to pay for an appraisal that does not give them what they want,

black listing honest appraisers in order to use "rubber stamp" appraisers, etc.

We request that action be taken to hold the lenders responsible for this type of violation and provide for a penalty on any person or business who engages in the practice of pressuring appraisers to do dishonest appraisals that do not provide for independent judgment. We believe that this practice has adverse effects on our local and national economies and that the potential for great financial loss exists. We also believe that many individuals have been adversely affected by the purchase of homes which have been over-valued.

We thank you for your cooperation and assistance

(This Petition is currently signed by more than **10,000 appraisers** from every state in the union – Mr. Tsutsui, Chair of my Arbitration Panel that decided that USPAP did not apply, signed this petition. Mr. Tsutsui had never ever performed as an arbitrator previously and therefore never in the position as the chair. I do not believe that he has ever performed in another arbitration ever since.)

When researching the history of Real Estate Appraisers in Hawaii that have been admonished, suspended or had their licenses revoked under any administrative proceeding, it looks odd that I have only been able to find **TWO (2)** in the past **TWENTY YEARS** with **EIGHT HUNDRED AND THIRTY-THREE (833)** presently listed in the National Registry. On the other hand, six months ago I began collecting data on delinquent appraisers from all of the United States and I have as of today 522 entries in my data base. Who they are and what they are is not significant. But, statistically it sorts of rounds off to about 20 appraisers per state on a yearly basis.. I find it odd that there were at least 10 complaints submitted to the RICO in the recent past and the number of delinquencies are still only **TWO (2)** listed in Hawaii for the past 20 years.

In a testimony to **Congress**, March 24, 2004, the General Accounting Office (**GAO**) outlined its recommendations in regards to USPAP, bolding supplied:

Transactions Not Covered by Title XI

Industry participants also voiced concerns about the fact that Title XI does not cover all financial institutions and that mortgage brokers are not subject to federal regulation. When Title XI was enacted, federally regulated lending institutions (banks, thrifts, and credit unions) made most mortgage loans. Today, other financial institutions, such as mortgage bankers and finance companies, account for a substantial share of the mortgage marketplace. Many of these financial institutions that are not federally regulated, as well as an increasing portion of regulated financial institutions, use mortgage brokers to originate loans, so that these brokers now originate about 50 percent of all mortgage loans. These entities and individuals may have state licenses, but they are not monitored by federal or state entities through, for example, examinations or audits.¹⁰ Appraisers have anecdotally reported that these originators pressure

them the most to appraise properties at or near the purchase price to assure that the mortgage transaction will occur. **Some industry participants have said that the \$250,000 real estate appraisal threshold established by the federal financial institution regulators undercuts efforts to protect consumers. These groups believe that oversight of real estate appraisals should be geared toward the interests of consumers, who should be able to expect an unbiased, objective third-party opinion of the value of real property offered as security for a loan.** However, Title XI was enacted in response to the impact of appraisal problems on federally insured depository institutions, and federal financial institution regulators have identified few problems or risks to depository institutions associated with loans valued below the \$250,000 threshold

-----END QUOTE-----

The Hawaii laws that apply to protection of the public can be read in the following section of the HRS and I am bolding the section that I believe apply:

-----QUOTE-----

§26H-2 Policy. The legislature hereby adopts the following policies regarding the regulation of certain professions and vocations:

- (1) The regulation and licensing of professions and vocations shall be undertaken only where reasonably necessary to protect the health, safety, or welfare of consumers of the services; the purpose of regulation shall be the protection of the public welfare and not that of the regulated profession or vocation;**
- (2) Regulation in the form of full licensure or other restrictions on certain professions or vocations shall be retained or adopted when the health, safety, or welfare of the consumer may be jeopardized by the nature of the service offered by the provider;
- (3) Evidence of abuses by providers of the service shall be accorded great weight in determining whether regulation is desirable;
- (4) Professional and vocational regulations which artificially increase the costs of goods and services to the consumer shall be avoided except in those cases where the legislature determines that this cost is exceeded by the potential danger to the consumer;
- (5) Professional and vocational regulations shall be eliminated when the legislature determines that they have no further benefits to consumers;
- (6) Regulation shall not unreasonably restrict entry into professions and vocations by all qualified persons; and
- (7) Fees for regulation and licensure shall be imposed for all vocations and professions subject to regulation; provided that the aggregate of the fees for any given regulatory program shall not be less than the full cost of administering that program. [L 1977, c 70, pt of §2; am L 1980, c 142, §1; am L 1996, c 45, §1]

-----END OF QUOTE-----

My personal losses are huge. My family broke up. My wife of 48 years of marriage divorced me because some attorney advised her that we were going to lose all of our savings in legal fees. The house was sold for \$749,000 and I do not believe the current owners/occupants are aware of the health and safety situation. KANEOHE Ranch, masquerading as "Residuary Limited Partners" ordered the property voided of trees, shrubs and top soil. The amount of pollution that was found exceeds the limits imposed by the EPA and is contained in more than 284 pages of comprehensive laboratory reports performed under EPA standards. The contamination was removed by private firms and deposited on private land, at least that is what I believe, since research did not find any official documentation that authorized the removal of HAZMAT .

I was subjected to humiliating procedures and incarceration. The current Chair of the Judiciary Selection Committee, Ms. Rosemary Fazio paid \$7000 on behalf of KANEOHE Ranch to a threat management firm to prepare a plan of attack against my person.

Worst of all, I had in my ward an old, blind dog and a small terrier both which since have succumbed because of my inability to care for their well-being. My imposed inability to provide for my family, and those that were dependant upon me, was the worst.

Too often one encounters the phrase of: "So what, this is Hawaii!" implying that justice and legality are mere words and not virtual reality since Hawaii is supposedly different from the rest of the world.

Accordingly I respectfully request a comprehensive reply and explanation about how your office has disseminated the spirit and intent of HRS 466k over the past several years for protection of the public.

Please include measures you have installed to monitor compliance and performance of the USPAP program for protection of the consumer public in accordance with HRS §26H-2 (1) above.

Sincerely,



KNUD LINDGARD

25 Aulike Street
Kailua, HI 96734-2748

e-mail: Lindgard@aol.com

LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
LT. GOVERNOR



LAWRENCE M. REIFURTH
DIRECTOR

NOE NOE TOM
LICENSING ADMINISTRATOR

REAL ESTATE APPRAISER PROGRAM

STATE OF HAWAII
PROFESSIONAL AND VOCATIONAL LICENSING DIVISION
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
P.O. Box 3469
HONOLULU, HAWAII 96801
www.hawaii.gov/dcca/pvl

May 27, 2008

Mr. Knud Lindgard
25 Aulike Street
Kailua, HI 96734-2748

Dear Mr. Lindgard:

This letter is in response to your letter sent to Mr. Lawrence M. Reifurth, Director, Department of Commerce and Consumer Affairs (DCCA), dated May 14, 2008. Director Reifurth has asked me to respond to you.

On page ten of your letter, you ask "...how your office has disseminated the spirit and intent of HRS 466K over the past several years for protection of the public." You go on to ask us to "include measures... installed to monitor compliance and performance of the USPAP program for protection of the consumer public in accordance with HRS §26H-2(1)..."

In response to the failure of a large number of savings and loan institutions in the 1980s, Congress conducted several hearings to determine the root cause of the crisis and took steps to ensure that a similar crisis would not occur again. During the course of their investigation, Congress was surprised to learn that appraisers, the individuals determining the value of the underlying collateral of loans, were generally unregulated. While professional licensing issues generally fall under the jurisdiction of state governments, Congress was concerned about protecting the future integrity of deposit insurance funds. Accordingly, Congress passed the Financial Institutions Recovery, Reform, and Enforcement Act (FIRREA) in 1989 (Codified in 12 United States Code §3301) to address the financial institution crisis. Congress included a provision known as Title XI mandating the regulation of appraisers by the states. Congress also mandated that the state appraiser regulatory agencies issue licenses and certificates to individuals who meet the Real Property Appraiser Qualification Criteria established by the Appraiser Qualifications Board (AQB).

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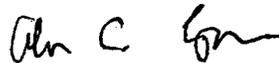
Mr. Knud Lindgard
May 27, 2008
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Pursuant to 466K, HRS, the DCCA has been issuing licenses to individuals who have met the Appraisal Qualification Criteria as mandated by the AQB. To monitor compliance with USPAP, new license applicants are required to complete a 15 hour USPAP course and examination. As part of the license renewal process, each licensee must complete a 7 hour USPAP update course every two years. This ensures that each licensee is familiar with the most current USPAP in order to protect the public.

To further protect the public, the Director has the authority under §16-114-7(8), HAR, "To delegate to the regulated industries complaints office (RICO)"... "the authority to facilitate the receipt, arbitration, investigation, and prosecution of complaints or any violation of chapter 466K, HRS, or this chapter..." He also has the authority under §16-114-7(4), HAR, "To discipline a real estate appraiser for cause prescribed by this chapter or 12 U.S.C. §3301 et seq., or for any violation of the rules and regulations and refuse to grant a person permission to practice as a real estate appraiser for any cause that would be grounds for disciplining a real estate appraiser..."

If you have any questions, please contact me at 586-2701.

Very truly yours,



ALAN C. TANIGUCHI
Executive Officer

ACT:tat

cc: Lawrence M. Reifurth, Director
DCCA

Re: SB 771
Hearing: February 26, 2009 at 8:30 AM
Senate Conference Room 229

Dear Honorable Chairperson Sen. Rosalyn Baker, Vice-Chairperson Sen. David Ige, and Members of the Senate Consumer Protection Committee,

Please Pass SB 771; however, please amend the underlined wording to read as follows:

A real estate appraiser shall comply with the Uniform Standards of Professional Appraisal Practice when acting as an appraiser or arbitrator in an arbitration to determine the fair market value or fair market rental of real estate.

This bill will bring accountability and transparency to an arbitrator's decision for real estate valuation/rental matters. Without passing this bill, that accountability and transparency does not exist. Our economy too dependant on the real estate industry, especially now, to allow this lack of accountability and transparency to continue.

This bill will go a long way to help assure that when parties are faced with the need to determine real estate values and/or real estate rental rates, both Buyers/Sellers and Lessors/Lessees will have a fair chance of obtaining a fair valuation or rental rate.

SB 771 references the methodology for establishing real estate values and rental rates, when same are being determined via an arbitration.

Currently arbitrators feel that they are exempt from following any standards, when they are required to arrive at a "Fair Market Value" or a "Fair Market Rental" for real estate. This bill will require appraisers to follow the national Appraisal Foundation's Uniform Standards of Professional Appraisal Practices (USPAP), whether or not an arbitration is involved.

The matter of determining real estate values and real estate rental rates, is far too important to be left to an individual's (or individuals') undocumented arbitrary opinion and decision.

The USPAP standards were established via Congress after the Savings & Loan industry fiasco of the 1980's, in an effort to require appraisers to value real estate on a fair and equitable basis, and have the valuation supported by appropriate documentation.

When considering that an arbitrator's award is so difficult (nearly impossible) to change, the need for this bill becomes even more apparent.

Whereas many disputes lend themselves well to arbitration and the typical one-line response in the arbitration award, the matter of real estate valuations or rentals does not.

Thank you.

Rick Krystoff
Alohasates1@aol.com