

HB 2288

Testimony of The Nature Conservancy of Hawai'i
Requesting an Amendment to H.B. 2288, HD1 Relating to Private Transfer Fees
(Provided by Mark Fox, Director of External Affairs)
Senate Committee on Commerce and Consumer Protection
Friday, March 12, 2010, 9:30AM, Room 229

The Nature Conservancy of Hawai'i is a private non-profit conservation organization dedicated to the preservation of Hawai'i's native plants, animals, and ecosystems. The Conservancy has helped to protect nearly 200,000 acres of natural lands for native species in Hawai'i. Today, we actively manage more than 32,000 acres in 11 nature preserves on O'ahu, Maui, Hawai'i, Moloka'i, Lāna'i, and Kaua'i. We also work closely with government agencies, private parties and communities on cooperative land and marine management projects.

The Nature Conservancy supports the intent of H.B. 2288, HD1 to protect against inappropriate or unscrupulous transfer fees that are attached as covenants and triggered upon future land sales.

However, **we request an additional legitimate exemption be added to §501- (b) and §502- (b) in the bill, as follows:**

- (7) Any reasonable fee payable to a qualified organization for:
(A) The qualified organization's management, stewardship or enforcement of a qualified real property interest in the real property, granted exclusively for a conservation purpose; or
(B) Educating new owners of the real property on the restrictions imposed by the qualified real property interest granted exclusively for a conservation purpose.
As used in this subparagraph, "qualified real property interest," "qualified organization," and "conservation purpose" have the same meaning as in Section 170(h)(2), (3) and (4), respectively, of the federal Internal Revenue Code.

Nonprofit conservation organizations often work with willing private landowners to place conservation easements on lands. These conservation easements run with the land and limit development and other uses of that land in order to protect the land's conservation, open space, agricultural, historic, and/or cultural values. Under federal law, nonprofit organizations that hold permanent conservation easements are required to annually monitor and, if necessary, enforce the easement to ensure that the landowner continues to abide by the easement terms. Oftentimes, conservation easements will include provisions for a transfer fee when portions of a property are transferred to a third party. Such transfers increase the nonprofits' monitoring and enforcement responsibilities and costs; thus, the transfer fee to cover those increased costs.

The amendment proposed above will allow transfer fees only on conservation interest transactions that would also meet the rigorous purpose, interest type, and organizational requirements of the federal tax laws related to tax deductions.

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March 12, 2010

Rep. Rosalyn H. Baker, Chair

and members of the Senate Committee on Commerce & Consumer Protection

Hawaii State Capitol

Honolulu, Hawaii 96813

Re: **House Bill 2288, House Draft 1 (Private Transfer Fees)**
Hearing Date/Time: Friday, March 12, 2010, 9:30 A.M.

I am the attorney for the **Hawaii Financial Services Association** ("HFSA"). The HFSA is the trade association for Hawaii's financial services loan companies, which are regulated by the Hawaii Commissioner of Financial Institutions. Financial services loan companies make mortgage loans and other loans.

The HFSA supports the intent of this Bill.

The purpose of the Bill is to prohibit the imposition of fees for a future transfer of real property. There are specified exceptions.

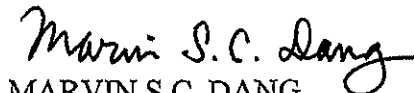
A private transfer fee is created by a private party through a deed restriction or covenant ("restriction") on a real property. This restriction requires every transferee (buyer) of the real property to pay a transfer fee to the private party which created that restriction.

Because this private transfer fee is paid every time that property is transferred, the private party imposing this restriction is retaining a part of the fee simple interest in the real property that is being transferred. Except for limited exemptions, this restriction is an inappropriate restraint on the transfer of real property.

As a trade association comprised of mortgage lenders, the HFSA is concerned about this restriction because of the negative impact that it can have on the value of and on the title to real property. Value is impacted because the restriction could make the property more difficult to sell. Title issues exist when title companies consider the property to be uninsurable.

We support the intent of this Bill because it has appropriate specified exemptions and ensures that future restrictions are unenforceable.

Thank you for considering our testimony.



MARVIN S.C. DANG

Attorney for Hawaii Financial Services Association

(MSCD/hfsa)

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MAUI COASTAL LAND TRUST

March 10, 2010

TO: Senator Roz Baker
CPN Committee

RE: Opposition to HB 2288 As Written

I am writing in opposition to the absolute ban on transfer fees for conveyance of interests in real property. This ban will cause significant harm to legitimate land conservation organizations who utilize a transfer fee only in very specific situations where transfer of the property to multiple owners will dramatically increase the perpetual stewardship responsibilities for lands on which the land trusts hold conservation easements.

The following request for exemption has been placed in testimony for the companion Senate Bill, and we would fully support the bill with the following **EXEMPTION**:

- (7) A reasonable fee payable to a qualified organization for:
- (A) The qualified organization's management, stewardship or enforcement of a qualified real property interest in the subject property; or
- (B) Educating new owners of the subject property on the restrictions imposed by the qualified conservation contribution and the conservation purposes of the contribution.

As used in this subparagraph, "qualified organization," "qualified real property interest," and "qualified conservation contribution" have the same meaning as in Section 170(h) of the federal Internal Revenue Code of 2008 and Section 1.170A-14 of the Internal Revenue Service Treasury Regulations of 2003. A "conservation easement" as defined in Section 198-1 of Hawaii Revised Statutes is a "qualified real property interest" and a "holder" as defined in Section 198-3 of Hawaii Revised Statutes is a "qualified organization", except that as between state and federal laws and regulations, for this subparagraph, the more restrictive definitions of "qualified real property interest" and "holder" shall apply.

Since all of the legitimate Hawaii land trusts are either accredited or have formally adopted the national Land Trust Alliance Standards and Practices, we are bound by that code of conduct which prevents "scammers" from utilizing this exemption. Only jurisdictions or Land Conservation organizations are even eligible by Federal and State laws to hold Conservation Easements.

Please do not pass HB2288 as written. However, with the amended language suggested above, we support HB2288

Sincerely,

A handwritten signature in black ink, appearing to read "Dale B. Bonar". The signature is fluid and cursive, with the first name "Dale" being the most prominent.

Dale B. Bonar,
Executive Director

**TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF 1250 OCEANSIDES
PARTNERS REGARDING H.B. NO. 2288, HD 1, RELATING TO PRIVATE
TRANSFER FEES**

March 12, 2010

To: Chairperson Rosalyn Baker and Members of the Senate Committee on Commerce and Consumer Protection:

My name is Bob Toyofuku and I am presenting this testimony on behalf of 1250 Oceansides Partners ("Oceansides") regarding H.B. No. 2288, HD 1.

Oceansides opposes this bill as currently drafted because of the adverse impact on the Foundation that was created to benefit the community arising out of a settlement agreement on its residential real estate project on the Big Island. The Hawaii Board of Realtors have proposed amendments to HRS Chapters 501 and 502 embodied in this bill which are intended to prohibit private transfer fees required by a deed restriction or covenant.

All residential lots in Oceansides Hokuli'a project are subject to a transfer fee pursuant to a Settlement Agreement between Oceansides and various parties including the County of Hawaii. Pursuant to the Settlement Agreement Oceansides created a "tax exempt" foundation called the Hokuli'a Foundation which has the purpose of advancing within the Kona community the concepts of affordable housing, health care, education and Native Hawaiian culture. The Foundation receives funding from transfer fees consisting of a percentage of the gross sales price of all lots sold within Hokuli'a. These proceeds are then allocated to specific community benefit projects in the Kona area.

If this committee intends to pass this bill forward, we request that the following amendments be included in this House Draft No. 1 (HD 1):

(1) To be inserted on page 4, after line 3: “(6) Any fee, charge, assessment or other amount payable pursuant to a deed restriction or other covenant running with the land that was first recorded, pursuant to a court order or court-approved litigation settlement, before July 1, 2010 with respect to the project or residential community of which the subject real property is a part; or”

(2) The same provision to be inserted on page 7 at line 3.

Also, Oceansides also requests that it will need confirmation that an association such as the Hokuli’a Park and Cultural Sites Association falls within exemption (b) (2) on page 2 of this bill and/or that it is made clear in this bill and/or the committee report that it falls within the exemption provision.

Thank you for the opportunity to testify on this measure.

March 11, 2010

The Honorable Rosalyn H. Baker, Chair

Senate Committee on Commerce and Consumer Protection
State Capitol, Room 231
Honolulu, Hawaii 96813

RE: H.B. 2288, HD1 Relating to Private Transfer Fees

HEARING: Friday, March 12, 2010 at 9:30 a.m.

Dear Chair Baker and Members of the Committee:

I am Gary Slovin, an attorney for Goodsill Anderson Quinn & Stifel, here to testify on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its 8,800 members in Hawai'i. **HAR supports H.B. 2288, HD1 with amendments.** H.B. 2288, HD1 prohibits the imposition of fees for a future transfer of real property, with certain limited exceptions.

PTF are fees imposed by private parties which require the payment of a certain amount (usually a percentage of sales price), potentially in perpetuity. PTFs may be imposed via deed restrictions or covenants. Sometimes, PTFs may be imposed as part of a new housing development upon the initial and subsequent purchasers of the property. These restrictions run with the land, and may not disclosed to subsequent buyers until the closing of a property sale.

Presently, there is no regulation over the imposition of PTFs, no limitation on the application of the fees, and no accountability or oversight of the recipients of the fees. HAR strongly supports prohibiting PTF because they decrease housing affordability, serve no public purpose, and provide no benefit to property purchasers or the community.

HAR believes that, left unregulated, PTFs can be misused, and may create significant financial barriers to homeownership. Because PTFs are funds due at closing, they can be a substantial burden on real property buyers, who are already financially committed to the costs of down payments, appraisals, title insurance, surveys, recording costs, mortgage points, attorney's fees, conveyance taxes, and other taxes and fees.

By supporting a prohibition on PTFs, HAR does not intend for any legitimate fees that may be part of typical real estate transactions to be inadvertently captured by the bill. HAR has met with various interested parties (including representatives from the bankers, condominium associations, title companies, developers and financial services) to make sure that all legitimate fees are exempted from this measure.

The attached Proposed S.D. 1 reflects language that we believe addresses the various stakeholders' concerns. The language in this draft was adopted by the Senate as S.B. 2373, S.D. 2, with the addition of the following:

1. Clarification regarding the exemption regarding fees paid pursuant to court approved litigation settlements entered into prior to the effective date.; and
2. Includes an exemption for fees paid for to qualified organizations exclusively for conservation purposes of the property.

We respectfully request that the Committee pass this measure with the amendments suggested above. Thank you for the opportunity to testify.

A BILL FOR AN ACT

RELATING TO PRIVATE TRANSFER FEES.

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

SECTION 1. Chapter 501, Hawaii Revised Statutes, is amended by adding a new section to the part entitled "Miscellaneous Provisions" to be appropriately designated and to read as follows:

"§501- Prohibition of transfer fees. (a) A deed restriction or other covenant running with the land applicable to the transfer of real property that requires a transferee of real property or the transferee's heirs, successors, or assigns, to pay a fee in connection with a future transfer of the property to a declarant or other person imposing the deed restriction or covenant on the property or a third party designated by a transferor of the property is prohibited. A deed restriction or other covenant running with the land that violates this section or a lien purporting to encumber the land to secure a right under a deed restriction or other covenant

running with the land that violates this section is void and unenforceable.

(b) This section shall not apply to the following fees or charges required by a deed restriction or other covenant running with the land in connection with the transfer of real property:

(1) Any interest, charge, fee, or other amount payable by a borrower to a lender pursuant to a loan secured by real property, including any fee payable to the lender for consenting to an assumption of the loan or transfer of the real property, for providing an estoppel letter or certificate, or for any shared appreciation interest or profit participation or other consideration payable to the lender in connection with the loan;

(2) Any fee, charge, assessment, or fine payable to condominium associations as defined by chapter 514A or chapter 514B, cooperative housing corporations as defined by chapter 421I or chapter 421H, and planned community associations as defined by chapter 421J, pursuant to a declaration, covenant, or law applicable to such association, including a fee or charge to change the association's records as to the owner of the real property or to provide an estoppel letter or certificate;

- (3) Any fee or charge payable to a landlord under a lease of real property, including a fee or charge payable to the landlord for consenting to an assignment of the lease, for providing an estoppel letter or certificate, or to change the landlord's records as to the owner of the lessee's interest in the lease;
- (4) Any consideration payable to the holder of an option to purchase an interest in real property or the holder of a right of first refusal or first offer to purchase an interest in real property for waiving, releasing, or not exercising the option or right upon transfer of the real property to another person;
- (5) Any fee, charge, shared appreciation interest, profit participation, or other consideration, payable by:
- (A) A person engaged in the business of the development of real property for resale to others and not for the person's own use or the use of the person's parent, affiliates, subsidiaries, or relatives;
- (B) A person who acquires real property for the purpose of engaging in the business of the development of real property for resale to others

or for the purpose of reselling the real property
to a person engaged in the business of the
development of real property for resale to
others; or

(C) A person who purchases real property initially
transferred at a price below the then prevailing
market value of the real property pursuant to an
affordable housing program established by the
seller;

(6) Any fee or charge payable to a government entity;

(7) Any fee, charge, or assessment payable pursuant to a
deed restriction or other covenant running with the
land, regardless of when filed, that was required by a
litigation settlement that was approved by the court
before the effective date of this section; or

(8) Any reasonable fee payable to a qualified organization
for:

(A) The qualified organization's management,
stewardship or enforcement of a qualified real
property interest in the real property, granted
exclusively for a conservation purpose; or

(B) Educating new owners of the real property on the
restrictions imposed by the qualified real

property interest granted exclusively for a conservation purpose.

As used in this subparagraph, "qualified real property interest," "qualified organization," and "conservation purpose" have the same meaning as in Section 170(h)(2), (3) and (4), respectively, of the federal Internal Revenue Code.

(c) A deed restriction or other covenant running with the land filed after the effective date of this section, or any lien to the extent that it purports to secure the payment of a transfer fee prohibited by this section, shall not be binding on or enforceable against the subject real property or any subsequent owner, purchaser, or mortgagee of any interest in the real property. This subsection shall not imply that any particular deed restriction, covenant running with the land or lien, filed prior to the effective date of this section, is valid per se.

(d) No person shall be entitled to recover from the recipient or payee any fee, charge, or assessment required by a deed restriction or other covenant running with the land in connection with the transfer of real property to the extent that the fee, charge, or assessment was paid prior to the effective date of this section."

SECTION 2. Chapter 502, Hawaii Revised Statutes, is amended by adding a new section to the part entitled "Other Provisions" to be appropriately designated and to read as follows:

"§502- Prohibition of transfer fees. (a) A deed restriction or other covenant running with the land applicable to the transfer of real property that requires a transferee of real property or the transferee's heirs, successors, or assigns, to pay a fee in connection with a future transfer of the property to a declarant or other person imposing the deed restriction or covenant on the property or a third party designated by a transferor of the property is prohibited. A deed restriction or other covenant running with the land that violates this section or a lien purporting to encumber the land to secure a right under a deed restriction or other covenant running with the land that violates this section is void and unenforceable.

(b) This section shall not apply to the following fees or charges required by a deed restriction or other covenant running with the land in connection with the transfer of real property:

(1) Any interest, charge, fee, or other amount payable by a borrower to a lender pursuant to a loan secured by real property, including any fee payable to the lender for consenting to an assumption of the loan

or transfer of the real property, for providing an
estoppel letter or certificate, or for any shared
appreciation interest or profit participation or other
consideration payable to the lender in connection with
the loan;

(2) Any fee, charge, assessment, or fine payable to
condominium associations as defined by chapter 514A or
chapter 514B, cooperative housing corporations as
defined by chapter 421I or chapter 421H, and planned
community associations as defined by chapter 421J,
pursuant to a declaration, covenant, or law applicable
to an association, including a fee or charge to change
the association's records as to the owner of the real
property or to provide an estoppel letter or
certificate;

(3) Any fee or charge payable to a landlord under a
lease of real property, including a fee or charge
payable to the landlord for consenting to an
assignment of the lease, for providing an estoppel
letter or certificate, or to change the landlord's
records as to the owner of the lessee's interest in
the lease;

(4) Any consideration payable to the holder of an

option to purchase an interest in real property or the holder of a right of first refusal or first offer to purchase an interest in real property for waiving, releasing, or not exercising the option or right upon transfer of the real property to another person;

(5) Any fee, charge, shared appreciation interest, profit participation, or other consideration, payable by:

(A) A person engaged in the business of the development of real property for resale to others and not for the person's own use or the use of the person's parent, affiliates, subsidiaries, or relatives; or

(B) A person who acquires the real property for the purpose of engaging in the business of the development of real property for resale to others or for the purpose of reselling the real property to a person engaged in the business of the development of real property for resale to others; or

(C) A person who purchases real property initially transferred at a price below the then prevailing market value of the real property pursuant to an

affordable housing program established by the seller;

(6) Any fee or charge payable to a government entity; or

(7) Any fee, charge, or assessment payable pursuant to a deed restriction or other covenant running with the land, regardless of when recorded, that was required by a litigation settlement that was approved by the court before the effective date of this section; or

(8) Any reasonable fee payable to a qualified organization for:

(A) The qualified organization's management, stewardship or enforcement of a qualified real property interest in the real property, granted exclusively for a conservation purpose; or

(B) Educating new owners of the real property on the restrictions imposed by the qualified real property interest granted exclusively for a conservation purpose.

As used in this subparagraph, "qualified real property interest," "qualified organization," and "conservation purpose" have the same meaning as in Section 170(h)(2), (3) and (4), respectively, of the federal Internal Revenue Code.

(c) A deed restriction or other covenant running with the land recorded after the effective date of this section, or any lien to the extent that it purports to secure the payment of a transfer fee prohibited by this section, shall not be binding on or enforceable against the subject real property or any subsequent owner, purchaser, or mortgagee of any interest in the property. This subsection shall not be construed to imply that any deed restriction, covenant running with the land or lien, recorded prior to the effective date of this section, is valid per se.

(d) No person shall be entitled to recover from the recipient or payee any fee, charge, or assessment required by a deed restriction or other covenant running with the land in connection with the transfer of real property to the extent that the fee, charge, or assessment was paid prior to the effective date of this section."

SECTION 3. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2010.

A BILL FOR AN ACT

RELATING TO PRIVATE TRANSFER FEES.

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

SECTION 1. Chapter 501, Hawaii Revised Statutes, is amended by adding a new section to the part entitled "Miscellaneous Provisions" to be appropriately designated and to read as follows:

 "§501- Prohibition of transfer fees. (a) A
deed restriction or other covenant running with the land
applicable to the transfer of real property that requires a
transferee of real property or the transferee's heirs,
successors, or assigns, to pay a fee in connection with a future
transfer of the property to a declarant or other person imposing
the deed restriction or covenant on the property or a third
party designated by a transferor of the property is prohibited.
A deed restriction or other covenant running with the land that
violates this section or a lien purporting to encumber the land
to secure a right under a deed restriction or other covenant

running with the land that violates this section is void and unenforceable.

(b) This section shall not apply to the following fees or charges required by a deed restriction or other covenant running with the land in connection with the transfer of real property:

(1) Any interest, charge, fee, or other amount payable by a borrower to a lender pursuant to a loan secured by real property, including any fee payable to the lender for consenting to an assumption of the loan or transfer of the real property, for providing an estoppel letter or certificate, or for any shared appreciation interest or profit participation or other consideration payable to the lender in connection with the loan;

(2) Any fee, charge, assessment, or fine payable to a ~~real property homeowners',~~

condominium associations as defined by chapter 514A or chapter 514B, cooperative, or property owners' association housing corporations as defined by chapter 421I or chapter 421H, and planned community associations as defined by chapter 421J, pursuant to a declaration, covenant, or law applicable to ~~an~~ such association, including a fee or charge to change the

association's records as to the owner of the real property or to provide an estoppel letter or certificate;

(3) Any fee or charge payable to a landlord under a lease of real property, including a fee or charge payable to the landlord for consenting to an assignment of the lease, for providing an estoppel letter or certificate, or to change the landlord's records as to the owner of the lessee's interest in the lease;

(4) Any consideration payable to the holder of an option to purchase an interest in real property or the holder of a right of first refusal or first offer to purchase an interest in real property for waiving, releasing, or not exercising the option or right upon transfer of the real property to another person;

(5) Any fee, charge, shared appreciation interest, profit participation, or other consideration, payable by:

(A) A person engaged in the business of the development of real property for resale to others and not for the person's own use or the use of the person's parent, affiliates, subsidiaries, or relatives; or

(B) A person who acquires the real property
for

the purpose of engaging in the business of the
development of real property for resale to others
or for the purpose of reselling the real property
to a person engaged in the business of the
development of real property for resale to
others; or

(C) A person who purchases real property initially
transferred at a price below the then prevailing
market value of the real property pursuant to an
affordable housing program established by the
seller;

(6) Any fee or charge payable to a government
entity-";

(7) Any fee, charge, or assessment payable pursuant to a
deed restriction or other covenant running with the
land, regardless of when filed, that was required by a
litigation settlement that was approved by the court
before the effective date of this section; or

(8) Any reasonable fee payable to a qualified organization
for:

(A) The qualified organization's management,
stewardship or enforcement of a qualified real

property interest in the real property, granted exclusively for a conservation purpose; or
(B) Educating new owners of the real property on the restrictions imposed by the qualified real property interest granted exclusively for a conservation purpose.

As used in this subparagraph, "qualified real property interest," "qualified organization," and "conservation purpose" have the same meaning as in Section 170(h)(2), (3) and (4), respectively, of the federal Internal Revenue Code.

(c) A deed restriction or other covenant running with the land filed after the effective date of this section, or any lien to the extent that it purports to secure the payment of a transfer fee prohibited by this section, shall not be binding on or enforceable against the subject real property or any subsequent owner, purchaser, or mortgagee of any interest in the real property. This subsection shall not imply that any particular deed restriction, covenant running with the land or lien, filed prior to the effective date of this section, is valid per se.

(d) No person shall be entitled to recover from the recipient or payee any fee, charge, or assessment required by a deed restriction or other covenant running with the land in

connection with the transfer of real property to the extent that the fee, charge, or assessment was paid prior to the effective date of this section."

SECTION 2. Chapter 502, Hawaii Revised Statutes, is amended by adding a new section to the part entitled "Other Provisions" to be appropriately designated and to read as follows:

"§502- Prohibition of transfer fees. (a) A
deed restriction or other covenant running with the land applicable to the transfer of real property that requires a transferee of real property or the transferee's heirs, successors, or assigns, to pay a fee in connection with a future transfer of the property to a declarant or other person imposing the deed restriction or covenant on the property or a third party designated by a transferor of the property is prohibited. A deed restriction or other covenant running with the land that violates this section or a lien purporting to encumber the land to secure a right under a deed restriction or other covenant running with the land that violates this section is void and unenforceable.

(b) This section shall not apply to the following fees or charges required by a deed restriction or other covenant

running with the land in connection with the transfer of real property:

(1) Any interest, charge, fee, or other amount payable by a borrower to a lender pursuant to a loan secured by real property, including any fee payable to the lender for consenting to an assumption of the loan or transfer of the real property, for providing an estoppel letter or certificate, or for any shared appreciation interest or profit participation or other consideration payable to the lender in connection with the loan;

(2) Any fee, charge, assessment, or fine payable to a real property homeowners',

condominium associations as defined by chapter 514A or chapter 514B, cooperative, or property owners' association housing corporations as defined by chapter 421I or chapter 421H, and planned community associations as defined by chapter 421J, pursuant to a declaration, covenant, or law applicable to an association, including a fee or charge to change the association's records as to the owner of the real property or to provide an estoppel letter or certificate;

(3) Any fee or charge payable to a landlord under a

lease of real property, including a fee or charge payable to the landlord for consenting to an assignment of the lease, for providing an estoppel letter or certificate, or to change the landlord's records as to the owner of the lessee's interest in the lease;

(4) Any consideration payable to the holder of an option to purchase an interest in real property or the holder of a right of first refusal or first offer to purchase an interest in real property for waiving, releasing, or not exercising the option or right upon transfer of the real property to another person;

(5) Any fee, charge, shared appreciation interest, profit participation, or other consideration, payable by:

(A) A person engaged in the business of the development of real property for resale to others and not for the person's own use or the use of the person's parent, affiliates, subsidiaries, or relatives; or

(B) A person who acquires the real property for the purpose of engaging in the business of the development of real property for resale to others

or for the purpose of reselling the real property
to a person engaged in the business of the
development of real property for resale to
others; ————— or or

(C) A person who purchases real property initially
transferred at a price below the then prevailing
market value of the real property pursuant to an
affordable housing program established by the
seller;

(6) Any fee or charge payable to a government
entity-"; or

(7) Any fee, charge, or assessment payable pursuant to a
deed restriction or other covenant running with the
land, regardless of when recorded, that was required
by a litigation settlement that was approved by the
court before the effective date of this section; or

(8) Any reasonable fee payable to a qualified organization
for:

(A) The qualified organization's management,
stewardship or enforcement of a qualified real
property interest in the real property, granted
exclusively for a conservation purpose; or

(B) Educating new owners of the real property on the
restrictions imposed by the qualified real

property interest granted exclusively for a conservation purpose.

As used in this subparagraph, "qualified real property interest," "qualified organization," and "conservation purpose" have the same meaning as in Section 170(h)(2), (3) and (4), respectively, of the federal Internal Revenue Code.

(c) A deed restriction or other covenant running with the land recorded after the effective date of this section, or any lien to the extent that it purports to secure the payment of a transfer fee prohibited by this section, shall not be binding on or enforceable against the subject real property or any subsequent owner, purchaser, or mortgagee of any interest in the property. This subsection shall not be construed to imply that any deed restriction, covenant running with the land or lien, recorded prior to the effective date of this section, is valid per se.

(d) No person shall be entitled to recover from the recipient or payee any fee, charge, or assessment required by a deed restriction or other covenant running with the land in connection with the transfer of real property to the extent that the fee, charge, or assessment was paid prior to the effective date of this section."

SECTION 3. New statutory material is underscored.

SECTION 4. This Act shall take effect on ~~January~~July
1, ~~2050~~2010.

~~Report Title:~~

~~Real Property; Transfer Fees~~

~~Description:~~

~~Prohibits the imposition of fees for a future transfer of real property. Specifies exceptions. Effective January 1, 2050.
(HB2288 HD1)~~

**HB 2288 HD1
RELATING TO PRIVATE TRANSFER FEES**

**PAUL T. OSHIRO
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Chair Baker and Members of the Senate Committee on Commerce and Consumer Protection:

I am Paul Oshiro, testifying on behalf of Alexander & Baldwin, Inc. (A&B) on HB 2288 HD1 “A BILL FOR AN ACT RELATING TO PRIVATE TRANSFER FEES.”

The purpose of this bill is to prohibit deed restrictions or covenants that require a transferee of real property to pay transfer fees to the person imposing the deed restriction or covenant in connection with a transfer of real property. The bill also provides an exemption for certain usual and customary fees, assessments, or charges encompassed in various real property transactions.

In an effort to alleviate economic speculation for affordable/workforce housing sold at prices below the prevailing market value, shared appreciation requirements have been utilized for a specified period of time following the initial sale of the affordable/workforce housing units. We understand that this bill may prohibit the use of this option, which is primarily intended to minimize speculative investment and profit making from affordable/workforce housing. We respectfully request your indulgence and assistance to incorporate into the exemption section of this bill consideration payable for shared appreciation interest, profit participation, or other consideration for residential real property that was initially transferred at a price below the then prevailing

market value of the real property. We have attached the following amended language for Subsections (b)(5) in both Sections 1 and 2 for your consideration:

(5) Any fee, charge, shared appreciation interest, profit participation, or other consideration, payable by:

(A) A person engaged in the business of the development of real property for resale to others and not for the person's own use or the use of the person's parent, affiliates, subsidiaries, or relatives;

(B) A person who acquires the real property for the purpose of engaging in the business of the development of real property for resale to others or for the purpose of reselling the real property to a person engaged in the business of the development of real property for resale to others; or

(C) A person who purchases real property initially transferred at a price below the then prevailing market value of the real property pursuant to an affordable housing program established by the seller; or

Thank you for the opportunity to testify.