

## A Bill for an Act Relating to Real Estate Appraisers.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds a lack of openness and transparency exists in the implementation of Act 227, Session Laws of Hawaii 2011 (Act 227), which was codified as section 466K-6, Hawaii Revised Statutes.

Act 227 requires appraisers acting as arbitrators to fully report the basis for an award and to certify compliance with the nationally accepted Uniform Standards of Professional Appraisal Practice when valuing properties and determining market value or market rent. Compliance with the Uniform Standards of Professional Appraisal Practice ensures adherence to professional standards that protect the parties to an arbitration and consumers in the State.

The legislature further finds that Hawaii has relatively few commercial appraisers who specialize in these matters and, consequently, these individuals or firms are the exclusive determiners of the market value or market rents of leasehold property in Hawaii. This results in members of the same profession gathering and selecting market data, presenting that data to arbitration panels as expert witnesses, and then deciding the matter as appointed arbitrators.

The legislature also finds that Act 227 was intended to bring data, openness, and transparency to a market controlled by few landlords and very few commercial and industrial appraisers. Unfortunately, since the passage of Act 227, confidentiality clauses have been incorporated into agreements that govern individual arbitration panels. Inclusion of these confidentiality clauses frustrates the legislature's intent in enacting Act 227 and works to the detriment of consumers because valuable market data is wilfully withheld from public use.

Real estate transactions that occur as sales transactions are recorded with the bureau of conveyances; any interested party may request a copy of a recorded real estate transaction from the bureau. Financial institutions, real estate firms, buyers, and sellers all take advantage of this data prior to participating in the market. Access to this information allows participants in the real estate market to better understand the volume and the value of that market in an open and transparent manner, allowing the market to function more efficiently.

In the resetting of industrial and commercial leasehold rents, recordation of an arbitration award and access to the record of the award at the bureau of conveyances would ensure public access to data that is currently unavailable, despite the enactment of Act 227. For the leasehold market to function with openness and transparency, and to further protect consumers in the State of Hawaii, the legislature finds that arbitration awards and reports must be available to all interested participants in the market.

It is the legislature's intent that these awards and reports be open to the public. Accordingly, the purpose of this Act is to support the openness and transparency originally contemplated by Act 227 by:

- (1) Requiring arbitration awards issued under chapter 466K, Hawaii Revised Statutes, to be public records;
- (2) Requiring real estate appraisers named or appointed as an arbitrator in a submission agreement to appraise or arbitrate entered into after July 1, 2014, to record with the bureau of conveyances all arbitration awards; records of awards, if separately issued; and any supplementary, dissenting, or explanatory opinions on awards within ninety days of the notification of the determination of the award to the parties;

- (3) Specifying that no agreement between the parties or the appraisers acting as arbitrators shall preclude or deny the requirement to record an award, the record of the award, or any supplementary, dissenting, or explanatory opinions; and
- (4) Clarifying that failure to make arbitration reports public or failing to record required information with the bureau of conveyances shall be a violation of the license or certification requirements of chapter 466K, Hawaii Revised Statutes.

SECTION 2. Section 466K-6, Hawaii Revised Statutes, is amended to read as follows:

~~“[§466K-6] Appraisers in arbitration proceedings; recordation; non-confidentiality. (a) Arbitration awards, records of awards, and supplementary, dissenting, or explanatory opinions recorded pursuant to this section shall be public records~~

~~(b) In an arbitration proceeding to determine the fair market value, fair market rental, or fair and reasonable rent of real property where the arbitrator is a real estate appraiser licensed or certified under [this] chapter, the record of an award shall include but not be limited to findings of fact; the state-licensed or certified appraiser’s rationale for the award; the state-licensed or certified appraiser’s certification of compliance with the most current Uniform Standards of Professional Appraisal Practice as approved by the director; and information regarding the evidence, including the data, methodologies, and analysis that provided the basis for the award.~~

~~(c) A real estate appraiser licensed or certified under this chapter who is named or appointed as an arbitrator in a submission agreement to appraise or arbitrate entered into after July 1, 2014, shall record with the bureau of conveyances all arbitration awards; records of awards, if separately issued; and any supplementary, dissenting, or explanatory opinions on awards within ninety days of the notification of the determination of the award to the parties.~~

~~(d) No agreement between the parties or the appraisers acting as arbitrators shall preclude or deny the requirement to record an award, the record of an award, or any supplementary, dissenting, or explanatory opinions as required by this section.~~

~~(e) Failure to comply with this section shall be a violation of this chapter for purposes of licensing or certification.”~~

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

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

(Became law on April 30, 2014, without the governor’s signature, pursuant to Art. III, §16, State Constitution.)