

March 14, 2009

**The Honorable Robert N. Herkes, Chair**

House Committee on Consumer Protection & Commerce  
State Capitol, Room 325  
Honolulu, Hawaii 96813

**RE: S.B. 1241, S.D.2 Relating to Real Property Transactions**

**Hearing Date: Monday, March 16, 2009 at 2:15 p.m.**

Aloha Chair Herkes and Members of the Committee:

I am Gary Slovin with Goodsill Anderson Quinn & Stifel, here to testify on behalf of the Hawai'i Association of REALTORS® (HAR) and its 9,600 members in Hawai'i. HAR **supports** S.B. 1241, SD2, which prohibits private transfer fees required by a deed restriction or covenant, with certain exceptions.

S.B. 1241, SD2 would prohibit a deed restriction or covenant that requires a transferee of real property to pay a transfer fee to the person imposing the deed restriction or covenant, in connection with a transfer of real property. Private transfer fees are deed restrictions or covenants imposed by an owner of real property, which require a fee to be paid to a specific individual or entity every time the property is sold. These restrictions run with the land and, oftentimes, are not disclosed to subsequent buyers until the closing of a property sale. Sometimes, such fees may be imposed as part of a new housing development upon the buyer and subsequent purchasers of the property.

Presently, there is no regulation over the imposition of such fees, no limitation on the application of the fees, and no accountability or oversight of the recipients of the fees.

HAR believes that private transfer fees may create significant barriers to homeownership, particularly because these fees are typically imposed at the closing of a transaction. This puts a burden on the homeowner, at a critical time when money may already be short.

S.B. 1241, SD2, in its present form is fundamentally the same as H.B. 874, HD2. It differs in some respects from the House version which was previously heard by your Committee. The Senate bill has a broader title. That will enable the bill to apply to commercial transactions as well as residential transactions. Accordingly, we would propose changes be made to the bill to allow for this:

First, we would suggest that the reference to "residential" properties be removed from the bill. The rationale behind this is that private transfer fees might also affect properties that do not fit into the "residential" categories (for example, resort condominiums), but still would be harmed by imposing such fees.



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Second, we have included an amendment that seeks to exempt legitimate fees that might be contemplated by and between developers and subdevelopers as opposed to subsequent purchasers. This would be in addition to the other exceptions in the bill that exempt from its coverage traditional fees that are legitimately imposed upon the transfer of property.

Finally, we recommend the placement of the private transfer fee restrictions in HRS Chapters 501 (Land Court) and 502 (Bureau of Conveyances), rather than Chapters 501 and 518, as set forth in S.B. 1241, SD 2. This is primarily a drafting preference, which tracks the language of H.B. 874, HD 2.

We are enclosing a redline and clean copy of the bill for your review, and would be happy to answer any questions you may have.

Mahalo for the opportunity to testify.