

**ACT 307**

S. B. 1128.

A Bill for an Act Relating to Residential Leaseholds, the Acquisition by the State Through Condemnation of Lands in Fee Simple and the Disposition Thereof, and the Rights of Lessees.

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

**PART I  
GENERAL PROVISIONS**

**SECTION 1. Findings and declaration of necessity.** The legislature finds that:

(a) A prime goal in the United States is the promotion of the public welfare and the securing of liberty as enunciated in the Constitution of the United States through the attainment of fee simple ownership of residential lots by the greatest number of people. Article I, section 2 of the State Constitution recognizes this goal when it states:

“All persons are free by nature and are equal in their inherent and inalienable rights. Among these rights are the enjoyment of life, liberty and the pursuit of happiness, and the acquiring and possessing of property . . . .”

(b) During the past few years, Hawaii’s economy has expanded greatly and its population has grown rapidly. Concomitantly, the demand for single-family residential lots, especially in the urban areas of the State where

the population growth has been concentrated, has increased sharply.

(c) The present-day land ownership system in the State is characterized by a concentration of the fee title to lands in the hands of a few. In the days of the Hawaiian monarchy, all of the lands were held by the Hawaiian kings and chiefs and a few of their faithful followers. While the concentration of ownership of land in the hands of a few may have been well-suited to the needs of the people in the days of the monarchy, it is hardly suited to the needs of the people in modern Hawaii. Yet, the pattern of concentration of land ownership in the hands of a few has remained essentially unchanged since the days of the monarchy. Today, land ownership is centered not in the monarchical government, but in the hands of a few estates, trusts and other private landowners. At least three-fourths of all privately held land in the State are currently owned by this small group of owners. Much of this land is in the rapidly developing urban areas of the State, where the need for single-family residential lots is critical.

(d) This critical shortage of land has led large landowners to enter into complex arrangements, such as development contracts, master leases, participating leases, subleases and leases with developers. The terms and conditions of these arrangements were at that time heavily weighted in favor of the lessors or fee owners against the developers and those who participated in the development or share in the lease rentals. Neither did the participants in the private arrangements or contracts or leases contemplate, at that time, the wholesale condemnation of private leased residential lots by the State as provided in this act.

(e) The few landowners have, over the years, permitted some of their urban lands to be developed into single-family residential lots. However, because of restrictive indentures in instruments creating the various trusts and estates, and because of income taxation problems, the landowners have generally engaged in the practice of leasing, rather than selling in fee simple, the residential lots developed on their lands.

(f) The population growth and the increase in demand for residential lots, and the concentration of ownership of private lands in the hands of a few and their practice of leasing, rather than selling in fee simple, the residential lots developed on their lands, have led to a serious shortage of residential fee simple property at reasonable prices in the State's urban areas and have deprived the people of the State of a choice to own or to take leases to the land on which their homes are situated.

(g) The shortage of single-family, residential, fee simple property, and the restriction on the people of a real choice between fee simple and leasehold residential property have in turn caused land prices for both fee simple and leasehold residential lots to become artificially inflated and have enabled lessors to include in residential leases terms and conditions that are financially disadvantageous to the lessees, restrict unduly their freedom to enjoy their leasehold estates and are weighted heavily in favor of the landlord as against the lessees.

(h) In the next twenty years, it appears that the few, large landowners

will continue to permit the development of leasehold, rather than fee simple, residential lots in counties exceeding 100,000 persons in population, unless legislation is enacted to reverse this trend.

(i) Even when the provisions providing for purchase of the fee simple title of residential lots by lessees or the State as provided in this act become effective, neither the lessees nor the State can possibly acquire all leasehold lands. Thus, many of the over 16,000 leasehold contracts now in existence and future leases will remain outstanding, and the economic facts stated above indicate clearly that lessees require certain statutory protection of their fundamental rights to bargain and to otherwise preserve their equitable and legal interests.

(j) The dispersion of ownership of fee simple residential lots to as large a number of people as possible, the ability of the people to acquire fee simple ownership of residential lots at a fair and reasonable price and the ability of lessees of residential leases to derive full enjoyment from their leaseholds are factors which vitally affect the economy of the State and the public interest, health, welfare, security and happiness.

The legislature declares as a matter of legislative determination that:

**SECTION 2. Definitions.** Unless otherwise clear from the context, as used in this Act:

(a) "Lease" means a conveyance of land by a fee simple owner as lessor, or by a lessee as sublessor, to any person, in consideration of a return of rent or other recompense, for a term (1) exceeding thirty-five years (including any periods for which the lease may be extended or renewed at the option of the lessee) as to leases existing and in force on the date of approval of this Act, or (2) exceeding twenty years (including any periods for which the lease may be extended or renewed at the option of the lessee) as to leases executed after the date of approval of this Act.

(b) "Lessor" means any person who leases or subleases land to another, and his heirs, successors, legal representatives and assigns.

(c) "Lessee" means any person to whom land is leased or subleased, and his heirs, successors, legal representatives and permitted assigns.

(d) "Fee simple owner" and "fee owner" mean the person who owns the fee simple title to the land which is leased, including a life tenant with a remainder over, vested or contingent and a holder of a defeasible estate, and his heirs, successors, legal representatives and assigns.

(e) "Legal and equitable owners" means the fee simple owner and all persons having legal or equitable interests in the fee or in the lessor's leasehold estate, including mortgagees, developers, lienors and sublessors, and their respective heirs, successors, legal representatives and assigns.

(f) The terms "lessor", "lessee", "fee simple owner", "fee owner", and "legal and equitable owners" include individuals, both masculine and feminine, and, except as to the term "lessee", the terms also include corporations, firms, associations, trusts, estates, and the State. When more than one person are the lessors, lessees, fee simple owners, fee owners, or legal and

equitable owners of a lot, the terms apply to each of them, jointly and severally.

(g) "Leased fee" and "leased fee interest" mean all of the interests of the fee owner, lessor and all legal and equitable owners of the land which is leased, other than the lessee's interest as hereinafter defined.

(h) "Lessee's interest" and "leasehold interest" mean the current fair market value of all on-site improvements, including all landscaping, walks, drives, walls, fences, buildings and betterments on the surface of the lot, paid for or required to be paid for by the lessee, plus the unamortized current replacement cost of all off-site improvements paid for or required to be paid for by the lessee, determined on the basis of current costs of installation of the same off-site improvements under the circumstances existing at the time of the original installation, and computed on a straight-line basis over the period of the lease, together with the lessee's value increment as hereinafter defined.

(i) "Lessee's value increment" means the value of his interest in the residential use, enjoyment and amenities of the lot during the balance of the unexpired term of the lease, computed notwithstanding any provision to the contrary in the lease or any other contract; provided that such value shall in no event be less than ten per cent nor more than 15 per cent of the current fair market value of the unencumbered fee of the lot.

(j) "Lot", "housetot", "residential lot", and "residential housetot" mean a parcel of land, one acre or less in size, which is used or occupied, or is developed, devoted, intended or permitted to be used or occupied as a principal place of residence for a single family.

(k) "Fair market value" means that amount of money that a purchaser willing, but not obliged, to buy an interest in land would pay to an owner willing, but not obliged, to sell it, taking into consideration all uses to which the land is adapted or might in reason be applied.

(l) "Development tract" means a single contiguous area of real property not less than five acres in size which has been developed and subdivided into residential lots occupied or to be occupied under leases. Two or more pieces of real property shall be considered as a single contiguous area if they would be contiguous except for the interposition or existence of a road, street, stream, or other like interference.

(m) "Authority" means the Hawaii housing authority created by chapter 74, Revised Laws of Hawaii 1955.

**SECTION 3. Applicability.** The provisions of this act apply to all lands leased as residential lots which are situated in counties with a population of 100,000 or more, owned or held privately or by the State, except Hawaiian home lands which are subject to Article XI of the Constitution of the State and lands owned or held by the federal government.

**SECTION 4. No estoppel or waiver.** The rights granted to lessees by this act shall be effective, notwithstanding any provision in any lease or contract to the contrary. No lessee shall be estopped by any covenant,

term, condition, or contract, however worded, from claiming the rights granted to him or otherwise be deemed to have waived such right. Any provision in any lease or contract contrary to the intent or purpose of this act shall be void.

**SECTION 5. Trusts and estates.** The rights granted to lessees by this chapter shall be effective, notwithstanding any condition or provision to the contrary in any instrument creating any life tenancy, defeasible fee, estate or trust, regardless of whether such tenancy, fee, estate or trust was in effect prior to the effective date of this act or is created hereafter; and the life tenant, holder, officer or trustee of any such tenancy, defeasible fee, estate, or trust may convey residential leases for terms exceeding twenty years and shall perform all acts required of him by this Act. Every such instrument now in existence or hereafter executed shall be construed in conformity with the intent and purpose of this Act.

**SECTION 6. Penalty.** Any person who violates any provision of this act shall be fined not more than \$5,000 nor less than \$1,000 or imprisoned not more than one year, or both. All fines collected shall be deposited in the fee simple revolving fund created by this act.

**SECTION 7. Administration of act.** The Hawaii housing authority shall administer this act.

**SECTION 8. Authority's duties, generally.** In addition to any other duty prescribed by law and in this act, the authority shall:

(a) Within six months after the date of approval of this act, adopt and promulgate, in accordance with chapter 6C, Revised Laws of Hawaii 1955, all rules and regulations necessary to effectuate the purposes of this act.

(b) Enforce the provisions of this act and the rules and regulations adopted pursuant thereto.

(c) Subject to the provisions of chapters 3 and 4, Revised Laws of Hawaii 1955, appoint and remove such administrative, technical and clerical staff as it may require and prescribe their powers and duties; except that the authority may appoint, without regard to chapters 3 and 4, one or more appraisers on a part-time, contractual basis for the purposes set forth in this act.

(d) Establish such reasonable fees to be assessed and collected from lessees for the services of any appraiser.

(e) Disseminate information and render assistance to lessees of residential lots in order that the provisions of this act may be understood and effectively implemented.

(f) Conduct an investigation upon any written complaint or whenever it appears to the authority that a provision of this act has been or is being violated. In such investigation, the authority may examine the books, accounts, records and files of any person connected with the matter under investigation and conduct hearings. If the authority finds from satisfactory evidence that any person has violated or is violating any of the provisions

of this act, it may order such person to cease and desist from continuing such violation or engaging therein or doing any act or acts in furtherance thereof and, where necessary, it may bring an action in the name of the State in any court of competent jurisdiction for enforcement of its orders.

(g) Acquire by eminent domain proceedings, all necessary property interests as provided in this act.

(h) Make and execute contracts, mortgages, and other instruments necessary or convenient to the exercise of the powers of the authority.

(i) Issue revenue bonds and refunding bonds as provided in this act.

(j) From time to time, require from the lessors of leases of residential lots and from all fee owners and legal and equitable owners of lots subject to such leases, such information as it may reasonably require in connection with the administration of this act.

(k) Do all things necessary and convenient to carry out the powers expressly conferred upon it by this act.

**SECTION 9. Interested members, officers, or employees.** No member of the authority or officer or employee administering the provisions of this act shall acquire any interest, direct or indirect, in the ownership or development of any development tract other than by gift, devise or inheritance, nor shall he have or acquire any interest, direct or indirect, in the financing or in any contract or proposed contract for services to be furnished or used in connection with or relating to the development of any development tract. If any such member, officer or employee has or acquires an interest by gift, devise or inheritance, direct or indirect, in any development tract or is a lessee of any residential lot affected by the eminent domain proceedings instituted under this act, he shall immediately disclose the same in writing to the authority and such disclosure shall be entered upon the minutes of the authority. Such member, officer or employee shall not participate in any action by the authority relating to the property, tract or contract in which he has or acquires any such interest. Violation of any provision of this section shall constitute misconduct in office and cause for dismissal.

## **PART II**

### **CONDEMNATION OF DEVELOPMENT TRACT**

**SECTION 10. Applicability.** This part applies to development tracts which are, at the time of acquisition of the tracts by the authority as provided herein: (a) developed and subdivided into residential houselots occupied by lessees under leases executed before the date of approval of this act; (b) developed and subdivided or partially developed into residential houselots occupied or to be occupied by lessees under leases executed after the date of approval of this act, provided that ten or more years remain before the final termination of the lease term, and provided further that 90 per cent of the leases to the lots have been executed.

**SECTION 11. Designation of development tract for acquisition.** The authority may designate a development tract for acquisition through

exercise of the power of eminent domain or by purchase under threat of eminent domain if, after due notice and public hearing, the time and place of which have been duly advertised in a newspaper of general circulation in the county in which the development tract is situated on at least three different days, the last publication being not less than five days before the date of hearing, the authority finds that the acquisition of the tract through exercise of the power of eminent domain or by purchase under threat of eminent domain and the disposition thereof, as provided in this part will effectuate the public purposes described in this act and shall also find either

(a) that a shortage of fee simple residential property exists in the county and that the acquisition and disposition of the development tract by the authority as provided in this part will assist in alleviating this shortage pursuant to the purposes of this act, or

(b) that the lessees of more than 50 per cent of the residential lease lots within the development tract are desirous of owning the leased fee interest to their lots and have the financial capabilities to pay for the same in the manner provided in this part.

The findings of the authority shall be conclusive in any suit, action or proceedings.

**SECTION 12. Exercise of power of eminent domain.** Within twelve months after the designation of the development tract for acquisition, the authority shall acquire through voluntary action of the parties, or institute eminent domain proceedings to acquire the tract so designated; provided that negotiations for acquisition by voluntary transaction shall not be required before the institution of eminent domain proceedings. Except as otherwise provided in this part, the authority shall exercise its power of eminent domain in the same manner as provided in chapter 8, Revised Laws of Hawaii 1955. If the development tract is not acquired or eminent domain proceedings are not instituted within the twelve month period, the authority shall reimburse the fee owner, the lessor and the legal and equitable owners of the land so designated for actual out-of-pocket expenses of appraisal, survey and attorney fees as the owner, the lessor, and the legal and equitable owners may have incurred as a result of the designation.

**SECTION 13. Compensation.** The compensation to be paid for the development tract shall be the current fair market value of the tract diminished by the lessees' interests in the leased lots within the tract. Compensation shall be determined as of the date of the designation of the development tract for acquisition.

**SECTION 14. Interest acquired.** (a) Upon acquisition of a development tract as provided in this part, the property interest acquired by the authority is all of the right, title, and interest of the fee owner, and of the lessor and all legal and equitable owners, if any, in and to the development tract acquired; subject to existing leases of residential houselots within the development tract, and to all covenants, conditions, easements, reservations and restrictions of record running with the land or contained in the

agreement of sale, deed or other conveyance held by the fee owner, lessor and legal and equitable owners or permitted or suffered by lessees of existing residential house lot leases, which are not inconsistent with the intent of this part. The acquisition terminates all the right, title and interest of the fee owner, lessor and all legal and equitable owners, whether such interest be a remainder, vested or contingent, a reversion, or other beneficial interest in the property, present or prospective.

(b) If the leasehold is subject to any mortgage, lien or encumbrance suffered or permitted by the lessee, including, but not limited to, rights arising through divorce, marriage or assignment, the purchase of the leased fee by the lessee shall in no manner affect or impair such mortgage, lien or encumbrance or the security afforded thereby to the holder thereof, and the leasehold shall continue, notwithstanding the purchase of the leased fee by the lessee, for the purpose and to extent necessary to avoid any impairment of such leasehold security, unless the holder of such leasehold mortgage, lien or encumbrance shall in writing consent to the transfer thereof to the fee as herein provided. Upon such written consent by the holder thereof, each such mortgage, lien or encumbrance to which the leasehold is subject and to which such consent refers shall be transferred to and shall bind the fee acquired by the lessee, and shall thereafter continue in full force and effect as a mortgage, lien or encumbrance of the fee acquired by the lessee, in the same order and priority among such mortgages, liens and encumbrances so transferred to the fee as the same applied to and bound the lessee's immediate, previous leasehold interest.

**SECTION 15. Interest in compensation paid by the authority.** The fee owner, lessor, and all legal and equitable owners shall share in the compensation paid by the authority as their respective interests shall appear. Notwithstanding any contrary provision in any contract or lease, a developer or other person entitled to share in the lease rentals shall share in such compensation paid by the authority to the extent of his interest as may be determined by agreement of those entitled to share in the compensation paid by the authority and in the absence of such agreement, the interest of a developer or other person entitled to share in the lease rentals shall equal his total share in the lease rentals for the remainder of the period during which he would have been entitled to share in the lease rentals, discounted to present day value.

**SECTION 16. Compulsory or involuntary conversion.** It is the intent of the legislature, within the meaning of section 1033 or section 1231 of the Internal Revenue Code or the applicable provisions of chapter 121, Revised Laws of Hawaii 1955, as well as all other statutes, rules, regulations, administrative orders and legal interpretations within the federal and state governments relating to taxation, that any conveyance of title to property by a fee owner to the authority under the provisions of this part shall constitute a compulsory or involuntary conversion (as a result of the exercise of the power of condemnation or the threat of imminence thereof), and



that such fee owner shall not be deemed, by reason in whole or in part of any provision of this part or by reason of the execution by the fee owner of leases to the property and other properties subsequent to the date of approval of this act, to hold the property primarily for sale to customers in the ordinary course of trade or business.

**SECTION 17. Disposition, generally.** It shall be the policy of the authority to encourage the widespread fee simple ownership of residential lots situated within a development tract. Where necessary or desirable, the authority may lease the residential lots. Not more than one lot shall be sold in fee simple or leased to a purchaser or lessee. A husband and his wife together, unless separated and living apart under a decree of separation issued by a court of competent jurisdiction, shall be entitled to only one lot. Except in case of a sale to the lessee of the leased fee interest to his leasehold residential lot, no sale in fee simple or lease shall be made unless the purchaser meets all of the qualifications enumerated in section 22.

**SECTION 18. Notice of disposition.** Except in case of a sale of the leased fee interest to the lessee of a residential lot under lease, no sale or lease of any residential lot shall be made by the authority unless he has published on at least two different days in a newspaper of general circulation in the county, a notice of its intent to sell or lease. The notice shall state, in general terms, the size, location and prices or lease rentals of the lots to be sold or leased, the terms of the sale or lease, and the last date on which applications will be received by the board, which date shall not be less than thirty days after the first publication of such notice. The notice shall also state the times and places at which more detailed information with respect to the sale or lease may be secured by interested persons.

**SECTION 19. Option of lessee to purchase leased fee.** The lessee of a residential lot within a development tract, whether he was a lessee at the time of the acquisition or became a lessee after the acquisition of the development tract, may purchase from the authority at any time during the term of his lease the leased fee interest to the lot; provided, that the lessee is not then in default in the performance of his obligations under the lease; and provided, further that the sales price shall be at the lowest possible price consistent with section 21 and the purpose of this act.

**SECTION 20. Disposition by lease.** The authority may lease any of the residential lots in a development tract at such lease rentals and upon such terms and conditions as it may determine. Such leases shall be subject to all of the rights of lessees enumerated in part III of this act. The authority may, in its discretion, utilize any of the residential lots and rent out the same for periods of twenty years or less for the purposes set forth in Title 8, Revised Laws of Hawaii 1955, or for any other purpose, all upon such terms and conditions as the authority may determine.

**SECTION 21. Not for profit.** It is hereby declared to be the policy of the State that the authority shall carry out its responsibilities under this

part in an efficient manner so as to enable it to fix the sales prices and rentals for residential lots at the lowest possible rates consistent with the purpose of this part; and that the authority shall not administer this part for profit, or as a source of revenue to the State. To this end, the authority shall fix the sales prices for residential lots or rentals for lots at no higher rates or prices than it shall find to be necessary in order to produce revenues which (together with all other available moneys, revenues, income and receipts of the authority from whatever sources derived under the administration of this part) will be sufficient: (a) to pay, as the same becomes due, the principal and interest on the bonds of the authority; (b) to meet the cost of, and to provide for the administration of this part; and (c) to create a reserve sufficient to meet the largest principal and interest payments which will be due on such bonds in any one year thereafter and to maintain such reserve.

**SECTION 22. Qualification for lease or purchase.** Except in the case of a sale to the lessee of the leased fee interest to any residential lot under lease, no lease or sale of any residential houselot within a development tract shall be made to any person:

(a) Unless he is a citizen of the United States or a declarant alien who has resided in the State for a period of five years or more; is at least twenty years of age; is a bona fide resident of the State and has a bona fide intent to reside in the development tract if successful in purchasing or leasing the lot; and has sufficient financial capabilities to meet the sales price or lease rentals.

(b) Who owns in fee simple lands suitable for residential purposes within the county and in or reasonably near the place of business of such person or has or have pending before the authority an unrefused application to lease or purchase a lot in a development tract. A person shall be deemed to own lands herein if he, his spouse or both he and his spouse (unless separated and living apart under a decree of a court of competent jurisdiction) owns such lands.

The authority may require additional testimony or evidence under oath in connection with any application. The determination by the authority of any applicant's eligibility under this part shall be conclusive as to all persons thereafter dealing with the property; provided that the making of any false statement knowingly by applicants or other person in connection with any application shall constitute perjury and be punishable as such.

**SECTION 23. Mortgages, agreements of sale, other instruments.**

(a) If the purchaser of a fee simple title or leased fee is unable to obtain sufficient funds at reasonable rates from private lenders, the authority may, by way of mortgage, agreement of sale or other instruments to secure the indebtedness, loan to the lessee up to ninety per cent of the purchase price.

(b) The purchaser of the fee simple title or leased fee shall pay not less than ten per cent of the price and execute with the authority an agreement of sale or mortgage or other instrument to secure the indebtedness

under the terms of which the unpaid balance and the interest thereon, at a reasonable rate determined by the authority, shall be paid in monthly installments over such periods as the authority may determine. Every mortgage, agreement of sale, other instruments to secure the indebtedness or instrument of indebtedness may contain such other provisions as are usually found in such instruments and shall provide that the purchaser may prepay the whole or any part of the unpaid balance of the purchase price plus accrued interest at any time without prepayment penalty.

(c) If the purchaser defaults on the payment of any loan, the authority shall take all necessary action to collect the delinquent principal and interest on the loan and may take all actions allowed to holders of obligations, including the power to repossess, purchase, lease, rent, repair, renovate, modernize and sell the property foreclosed.

**SECTION 24. Restrictions on sale and use of residential lots.** (a) For a period of five years after the lease was initially issued by the authority for a residential lot, or after the purchase from the authority of the fee simple title to a residential lot where the purchase was made other than as a result of the exercise by a lessee of his option to purchase the leased fee, the lessee or purchaser shall not assign the lease or sell the fee unless he has first notified the authority in writing of his intention to assign or sell. The notice shall specify the lessee's or purchaser's address and shall expressly offer to sell such property to the authority at a price which shall not exceed the sum of the original cost to the lessee or purchaser less depreciation at the rates used for real property tax purposes, of all buildings and improvements thereon.

(b) Within thirty days after the receipt of such notice the authority shall in writing notify the lessee or purchaser at the address so specified whether it elects to exercise its option. If the authority refuses, or fails within the thirty-day period to reply to the offer, the lessee or purchaser may assign the lease or sell the property in fee to any person, free from any price restrictions.

(c) The authority may lease, rent or resell any lot and improvements so purchased as any other lot held by it under this part.

(d) Any original lease, deed, agreement of sale, mortgage and other instruments of conveyance issued by the authority under this part shall expressly contain the restriction on sale and use of the residential lot as prescribed by this section.

**SECTION 25. Bonds.** From time to time, the authority may issue revenue bonds, and also refunding bonds for the purpose of paying or retiring bonds previously issued, in such amounts as it may deem advisable for the purpose of this part. The authority may issue such types of bonds as it may determine, including bonds on which the principal and interest are payable exclusively from the income and revenues of the development tract, the acquisition and development of which are financed with the proceeds of such bonds or from the income and revenues of other development

tracts, the acquisition and development of which are not financed with the proceeds from such bonds. Any such bonds may be additionally secured by a pledge of any other revenues received. Any provision of any law to the contrary notwithstanding, all bonds issued pursuant to this act shall be fully negotiable.

Neither the members of the authority nor any person executing the bonds shall be liable personally on the bonds by reason of the issuance thereof.

**SECTION 26. State and political subdivisions not liable on bonds.** The bonds and other obligations of the authority under this part (and such bonds and obligations shall so state on their face) shall not be a debt of the State or of any political subdivision; neither the State nor political subdivisions shall be liable thereon, nor in any event shall they be payable out of any funds or properties other than those of the authority under this part. The bonds shall not be considered public indebtedness within the meaning of paragraph 2 of section 3, Article VI of the Constitution of the State, nor shall such bonds constitute an indebtedness within the meaning of any other debt limitation or restriction. Bonds may be issued under this part notwithstanding any debt or other limitation prescribed by any statute.

**SECTION 27. Form and sale of bonds.** The bonds of the authority shall not be subject to section 9-5.5, Revised Laws of Hawaii 1955. They shall be authorized by resolution and may be issued in one or more series and shall bear such date or dates, mature at such time or times, not exceeding sixty years from the date thereof, bear interest as determined by the authority, be in such denomination or denominations, be in such form either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms or redemption (with or without premium) as such resolution, its trust indenture or mortgage may provide.

The bonds shall be sold at not less than par at public sale held after notice published once at least five days prior to such sale in a newspaper having a general circulation in the State; provided that such bonds may be sold at not less than par to the federal government at private sale without any public advertisement.

If any member or officer of the authority whose signature appears on any bond or coupon ceases to be such member or official before the delivery of such bond, his signature shall, nevertheless, be valid and sufficient for all purposes, the same as if such member or officer had remained in office until such delivery. In any suit, action or proceedings, involving the validity or enforcement of any bond of the authority or the security therefor, any such bond, reciting in substance that it has been issued by the authority to aid in financing loans under this part, shall be conclusively deemed to have been issued in accordance with the purposes and provisions of this part.

**SECTION 28. Provisions of bonds.** In connection with the issuance of bonds or the incurring of any obligation and to secure the payment

of such bonds or obligations, the authority may make such covenants and do any and all such acts and things as may be necessary, convenient or desirable in order to secure its bonds, or, in the absolute discretion of the authority, tend to make the bonds more marketable, notwithstanding that such covenants, acts or things may not be enumerated in this act.

**SECTION 29. Bonds as legal investments.** The State and all of its public officers, municipal corporations, political subdivisions, and public bodies, all banks, bankers, trust companies, savings banks and institutions, including savings and loan associations, all investment companies, insurance companies, insurance associations and other persons carrying on an insurance business in the State, and all executors, administrators, guardians, trustees and other fiduciaries in the State may legally invest monies or funds belonging to them or within their control and available for investment under other provisions of law, in any bonds or other obligations issued by the authority under this part, and such bonds and other obligations of the authority shall be authorized security for all public deposits and shall be fully negotiable in the State. It is the purpose of this section to authorize any of the foregoing to use any funds owned or controlled by them, including (but not limited to) sinking, insurance, investments, retirement, compensation, pension and trust funds and funds held on deposit, for the purchase of any such bonds or other obligations; provided that nothing contained in this section shall operate to relieve any person, firm or corporation from liability for failure to exercise reasonable care in selecting investments or, in the case of a guardian or trustee, from liability for failure to exercise the judgment and care to observe the duties required of a guardian or trustee by sections 179-14 and 340-6, Revised Laws of Hawaii 1955.

**SECTION 30. Exemption from taxation and assessments.** The authority and the property acquired by it under this part, if not leased or sold, shall be exempt from any and all taxes and assessments. Bonds, notes, debentures and other evidences of indebtedness issued by the authority are declared to be issued for a public purpose and to be public instrumentalities and, together with interest thereon, shall be exempt from taxes.

**SECTION 31. Investment of reserves.** The authority may invest any funds held in reserves or sinking funds, or any funds not required for immediate disbursement, in property or securities in which savings banks may legally invest funds subject to their control. No provisions with respect to the acquisition, operation or disposition of property by other public bodies shall be applicable to the authority under this part unless otherwise specifically provided by law.

**SECTION 32. Security for funds deposited.** The authority may, by resolution, provide that all moneys deposited by it shall be secured: (1) by any securities by which funds deposited by the state director of finance may be legally secured as provided in section 133-3, Revised Laws of Hawaii 1955, or (2) by an undertaking with such sureties as are approved by the

authority faithfully to keep and pay over upon the order of the authority any such deposits and agreed interest thereon, and all banks and trust companies may give any such security for such deposits.

**SECTION 33. Fee simple residential revolving fund.** A fee simple residential revolving fund is hereby created. The funds appropriated for the purposes of this act and all moneys received or collected by the authority under the provisions of this act shall be deposited in the revolving fund. The proceeds in the funds shall first be used to pay the principal and interest on bonds or other indebtedness issued by the authority and then for necessary expenses of the authority in administering this part.

### PART III RIGHTS OF LESSEES

**SECTION 34. Applicability.** Except as otherwise expressly provided, this part applies to all leases existing and in force on the date of approval of this act and to all leases executed thereafter.

Notwithstanding any term, condition or provision in any lease to the contrary, the lessee of a residential lot shall have all of the rights enumerated in this part.

**SECTION 35. Discrimination.** No person shall be denied the right to become a lessee of a residential lot, because of his race, religion, sex, or ancestry.

**SECTION 36. Free assignability.** A lessee may assign his lease at any time without the approval or consent of the lessor, and the assignee shall have the same rights and obligations under the lease as the original lessee; provided that no such assignment shall be effective to transfer any interest in the lease unless the lessor has received (a) either a true executed copy of such assignment or written notice thereof, (b) a reasonable service charge, except in case of an assignment by way of mortgage or assignment to or by the Federal Housing Administration or Veterans Administration or a foreclosure of mortgage or assignment in lieu of foreclosure, and (c) the written undertaking of the assignee to perform all obligations of the lessee under the lease, which undertaking may be incorporated in such assignment. No such assignment shall release the assignor from liability under the lease unless the lessor consents in writing to the assignment. The lessor shall not require payment of any money for his consent except the service charge, nor withhold such consent unreasonably. Any person acquiring the leasehold estate in consideration of the extinguishment of a debt secured by mortgage of the lease or through foreclosure sale, judicial or otherwise, shall be liable to perform the obligations imposed on the lessee by the lease only during the period such person has possession or ownership of the leasehold estate.

**SECTION 37. Forfeiture.** No forfeiture of the lessee's interest in a leasehold shall be declared by the lessor for the lessee's failure to pay the rent or otherwise to perform his obligations under the lease, unless the

lessor has given written notification to the lessee of the default and has given the lessee at least thirty days within which to correct the default.

**SECTION 38. Extension.** From time to time during the first twenty years of the term of any lease, the lessee shall have the right to extend the lease term to fifty-five years, commencing on the first day of the calendar month in which the lessee gives written notice thereof to the lessor, subject to the following conditions:

(a) At the time the right to extend the lease is exercised, the unexpired term of the lease shall be less than fifty years;

(b) The extension shall be for the purpose of mortgaging the leasehold interest;

(c) The lessee is not then in default in any respect under the lease; and

(d) The notice shall be accompanied by payment of a reasonable service charge.

This provision shall apply only to leases executed and effective subsequent to the date of approval of this act.

**SECTION 39. Lease rental.** In every case of an extension under section 38 the annual lease rental during the first thirty years shall not exceed an amount determined as follows:

(a) Compute to nearest whole year, seventy-five per cent of the unexpired period of fixed rent at the commencement of the extended term;

(b) Multiply the number of years computed in (a) by the fixed annual rent in effect immediately prior to such extension;

(c) Deduct from thirty years the number of years computed in (a) and multiply that difference by the annual rent determined by mutual agreement of lessor and lessee within thirty days after such extension or by arbitration in accord with chapter 188 of the Revised Laws of Hawaii 1955; and

(d) Add the amounts computed in (b) and (c) and divide that sum by 30. This sum rounded to the nearest dollar shall be the annual rent for the first thirty years of the extended term; provided that such rent shall not without the consent of the lessor be less than the annual rent in effect immediately prior to such extension.

The annual rent payable hereunder for and during the remaining period of the extended term shall be determined by mutual agreement of the lessor and the lessee, or if they fail to reach such agreement at least ninety days before the commencement of the period, by arbitration in accordance with chapter 188, Revised Laws of Hawaii 1955.

**SECTION 40. Zoning changes.** A lessor, fee owner or any legal or equitable owner applying for a change in zoning in any area shall notify all of his lessees within three-fourths miles of the land proposed to be rezoned of the application and its contents at least thirty days before filing the same before any public zoning authority.

**SECTION 41. Rights to self-organization; remedies.** Lessees in a development tract shall have the right of self-organization and the right to

form, join, or assist each other in forming associations for their mutual benefit or to select representatives of their choosing to engage in bargaining with their lessor or to secure other mutual aid or protection as may be necessary or desirable with respect to their respective leasehold interests. No lessor or agent of the lessor shall interfere with, restrain or coerce any lessee in the exercise of the rights granted by this section or dominate or attempt to control the formation of any such organization. Neither the lessor nor the organization or the duly authorized representative of a majority of such lessees shall refuse to bargain collectively in good faith with each other. In the event of any such refusal or violation of this section, either party may file a complaint with the authority, and the authority, after due notice of hearing and hearings, may issue such cease and desist orders as shall be meet and just in the light of the evidence adduced.

**SECTION 42. Sale of fee by lessor.** No fee owner of any residential lot under lease shall sell the leased fee interest to the lot to any third party unless he has first given a written thirty-day notice to the lessee and the authority of such intention.

**SECTION 43. Reversion of improvements.** At the termination of any lease, or at the expiration of the lease term, the lessee may remove all improvements on the lot which were constructed at the cost of, or otherwise paid for by the lessee, without compensating the lessor therefor.

#### PART IV

#### SEVERABILITY, JUDICIAL DECLARATION, AND EFFECTIVE DATE

**SECTION 44. Severability.** If any part, section, sentence, clause, or phrase of this act, or its application to any person or transaction or other circumstances, is for any reason held to be unconstitutional or invalid, the remaining parts, sections, sentences, clauses and phrases of this act, or the application of this act to other persons or transactions or circumstances, shall not be affected. The legislature hereby declares that it would have passed this act and each part, section, sentence, clause, or phrase thereof, irrespective of the fact that any one or more parts, sections, sentences, clauses, or phrases of this act, or its application to any person or transaction or other circumstance, be declared unconstitutional or invalid.

**SECTION 45. Judicial declaration on validity of act.** Any time after the date of approval of this act, any interested person may petition the supreme court for a judicial declaration as to the validity of any provision of this act pursuant to chapter 227 or chapter 228, Revised Laws of Hawaii 1955.

**SECTION 46. Effective date.** Parts I, III and IV shall take effect upon approval of this act; part II shall take effect on July 1, 1969.

(Became law June 24, 1967, without Governor's signature pursuant to State Constitution, Art. III, § 17.)