

ACT 220

H.B. NO. 2733-82

A Bill for an Act Relating to Real Property Leases.

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

SECTION 1. Chapter 519, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§519- Leases of real property by a cooperative housing corporation.

(a) All leases executed by a cooperative housing corporation as lessee whether executed prior to or after the effective date of this section, which provide for reopening of the contract for renegotiation of lease rent terms, shall provide or be construed in conformity with the following:

- (1) Such renegotiations shall not be scheduled more frequently than once every ten years; provided that the first of such reopenings shall not be scheduled prior to the fifteenth year following the initial date of the lease; and
- (2) Upon renegotiation, the lease rent payable by a cooperative housing corporation as lessee shall not exceed the amount derived by multiplying the “owner’s basis” by the original percentage rate.

(b) In the event the parties to a lease are unable to achieve agreement under any reopening provision, the Hawaii housing authority or its designee shall arbitrate, and its findings shall be binding and conclusive on both parties.

(c) Any covenant or provision of a lease in violation of this section shall not be enforceable in any court in this State.

(d) For purposes of this section:

- (1) "Cooperative housing corporation" means a corporation:
 - (A) Having one and only one class of stock outstanding;
 - (B) Each of the stockholders of which is entitled solely by reason of the shareholder's ownership of stock in the corporation, to occupy for dwelling purposes the dwelling unit in a building, owned or leased by the corporation and situated on land leased by the corporation; and
 - (C) No stockholder of which is entitled (either conditionally or unconditionally) to receive any distribution not out of earnings and profits of the corporation except in a complete or partial liquidation of the corporation.
- (2) "Offsite improvements" means all physical improvements such as, but not limited to, roads, sewer lines, sewage treatment plants, and underground utility cables, constructed or placed in a subdivison or development off the land intended for occupancy, which improvements are to be used in common by occupants of all lands adjoining such improvements or by occupants of all lands for whose benefit the improvements have been constructed or placed.
- (3) "Onsite improvements" means all physical improvements placed on a residential lot intended for occupancy which improvements are for the benefit of occupants of that lot, including, but not limited to, dwelling units, garages, service buildings, stairs, walkways, driveways, walls, trees, shrubs, landscaping, and pools.
- (4) "Owner's basis" means the value of the lessor's leased fee interest in the property that would apply if such interests were normally traded on an open market. The fair market value of the owner's basis shall be established to provide the lessor with just compensation for the lessor's interests in the lot and shall take into consideration every interest and equity of the lessee in establishing that market value. The value may be determined by any method which is normally used by qualified appraisers in establishing the fair market value of a lessor's leased fee interest in land.
- (5) "Original percentage rate" means the percentage derived by dividing the annual lease rent established for the first fixed rent period under the lease by the fair market value of the land as of the first day of the first fixed rent period."

SECTION 2. If any provision of this Act, or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 3. New statutory material is underscored.¹

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

(Approved June 12, 1982.)

Note

1. Edited pursuant to HRS §23G-16.5.