

ACT 326

H.B. NO. 1624

A Bill for an Act Relating to Residential Leaseholds.

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

SECTION 1. Chapter 514C, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§514C- Sales to individual lessees. Notwithstanding any other provisions in this chapter, a lessor may sell the leased fee interest in any land under a condominium project or cooperative project or any part thereof to individual condominium unit lessees or cooperative unit lessees, provided that the following requirements have been complied with:

- (1) No individual lessee shall be obligated to enter into a contract to purchase without having been afforded a period of at least ninety days within which to consider the offer made by the lessor, provided that the individual lessee may enter into a contract to purchase before the ninety days expires if the individual lessee so desires. The lessee shall further have the right to terminate such contract to purchase without penalty for a period of ninety days from the date the contract was first entered into;
- (2) At the time any offer to sell the leased fee interest is communicated to the lessee by the lessor, the association of owners or cooperative housing corporation shall be provided with written notice delivered or mailed by registered or certified mail, return receipt requested, postage prepaid, to any two of the president, vice-president, or managing agent (if any), of the lessor's intent to sell the interest, together with a complete and correct copy of the offer, which offer shall contain the full and complete terms thereof. Except as provided in paragraph (3), where the board of directors of the association of apartment owners or cooperative housing corporation has written authorization to represent its members, then the association or corporation shall have a right of first refusal to purchase that leased fee interest for the same price as is contained in the written purchase offer, provided that the offer shall be deemed to be rejected if not accepted in writing by the board of directors of the condominium project or the cooperative housing cor-

- poration within one hundred twenty days of its receipt of written notice from the seller, as evidenced by the return receipts;
- (3) Any board of directors of the association of apartment owners or cooperative housing corporation may fully or partially waive its right of first refusal at any time with written notice to the lessor, provided, however, that it shall waive its right of first refusal with respect to the leased fee interest appurtenant to a lessee's apartment at the written request of the lessee. The legislature hereby gives the board of directors of the association of apartment owners or cooperative housing corporation the authority to exercise the foregoing waiver without having to amend any bylaws, charter, or other governing documents;
 - (4) Notwithstanding any provision contained in any bylaws, or any amendment thereto or written authorization, authorizing the board of directors of the association of apartment owners or cooperative housing corporation to represent the individual lessees in the lease-to-fee conversion, each individual shall have the right to represent himself or herself in such lease-to-fee conversion by giving written notice of such desire to the lessor and the board of directors; and
 - (5) After the lessor (or its agent or representative) has been able to hold one meeting with the lessees and has been able to provide a written summary of the meeting to the lessees, then for a period of ninety days thereafter, the lessor, its agents, employees, and representatives, shall not initiate communication with the lessees regarding the offer, although such parties may respond to inquiries made by lessees."

SECTION 2. Section 514C-5, Hawaii Revised Statutes, is amended to read as follows:

“§514C-5 Offer to other prospective purchasers; time limit. No lessor shall [offer to] sell the leased fee interest in any land under a condominium project or cooperative project containing one or more residential units or any part thereof to any party other than the association of apartment owners or cooperative housing corporation for that project until a right of first refusal for the purchase of that interest has been offered as required by this chapter and has been rejected in writing by the board of directors[;], except in the case of sales to individual condominium unit lessees or cooperative unit lessees, which shall be subject to the requirements of section 514C-_____; provided that an offer made pursuant to sections 514C-2, [and] 514C-3, and 514C-_____ shall be deemed to be rejected if not accepted in writing by the board of directors of the condominium project or the cooperative housing corporation within one hundred twenty days of its receipt of the written notice from the seller, as evidenced by the return receipts, or if the sale, through no fault of the seller, has not closed upon the purchase of one hundred per cent of the interest being sold within one hundred eighty days of receipt by the board of directors of such written notice, as evidenced by the return receipts. In the event that closing is delayed due to any fault of the seller, the deadline for closing shall be extended for a period of time equal to the delay caused by seller.”

SECTION 3. Section 516-33, Hawaii Revised Statutes, is amended to read as follows:

“§516-33 Qualification for purchase. (a) Except as otherwise provided under section 516-28, no application to purchase shall be accepted nor shall any sale of any residential houselot within a development tract [shall] be made to any person unless the person meets the following requirements:

- (1) Is at least eighteen years of age;
- (2) Is a bona fide resident of the State [or has a bona fide intent to reside in the development tract if successful in purchasing the lot] and [does reside] resides on the lot [within five years of purchase of the lot], except in hardship circumstances as determined by the corporation[;] on a case by case basis where such inability to reside on the lot arises out of a temporary job or military transfer, a temporary educational sabbatical or the serious illness of the person; provided further that if either the person or the lessor disagree with the corporation's determination, they shall be entitled to a contested case proceeding under chapter 91 in which both the person and lessor shall be parties;
- (3) Has legal title to, or pursuant to an agreement of sale an equitable interest in, a residential structure situated on the leased lot applied for; provided that for the purposes of this section, the vendor under such agreement of sale shall not be eligible to purchase the lot. An agreement of sale means an executory contract for the sale and purchase of real property which binds one party to sell and the other party to buy property which is the subject matter of the transaction;
- (4) Has a letter of credit, certificate of deposit, proof of funds, or approved application from any lending institution demonstrating that the person will be able to promptly pay the corporation for the leased fee interest in the lot;
- (5) Submits an application in good faith in such form as is acceptable to the corporation;
- (6) Executes a contract for purchase of the fee interest in such form as is acceptable to the corporation; and
- (7) Does not own in fee simple lands suitable for residential purposes for such person within the county and in or reasonably near the place of business of such person or has or have pending before the housing finance and development corporation an unrefused application to lease or purchase a lot in a development tract. A person is deemed to own lands herein if the person, the person's spouse, or both the person and the person's spouse (unless separated and living apart under a decree of a court of competent jurisdiction) own lands.

(b) The amount set by the corporation for the leased fee interest in the lot for which the lessee must obtain a letter of credit, certificate of deposit, proof of funds, or approved application for loan pursuant to section 516-33(4) shall not be admissible for any reason in any action, suit, or proceeding brought under this chapter. Any financial information the corporation may request and obtain from the lessees shall not be discoverable or admissible in any action, suit, or proceeding brought under this chapter.

(c) In the event of a wilful breach of contract of a lessee to purchase the leased fee interest, the corporation may sell or assign its interest without respect to the requirements of this section.

(d) The corporation may require additional testimony or evidence under oath in connection with any application. The determination by the corporation 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 shall be punishable as such. The corporation shall adopt rules pursuant to chapter 91 to effectuate the purposes of this section.'

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 5. This Act shall not affect any offer to sell or sale of a leased fee interest to an apartment owner, association of apartment owners, or cooperative housing corporation, which is pending on the effective date of this Act.

SECTION 6. This Act shall take effect upon its approval.

(Approved June 23, 1993.)

Note

1. Edited pursuant to HRS §23G-16.5.