

ACT 241

S.B. NO. 285

A Bill for an Act Relating to Condominium Property Regimes.

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

SECTION 1. The legislature finds that condominium lessees are often able to acquire the leased fee interest appurtenant to their apartments at more affordable prices when the association of apartment owners negotiates directly with the project's lessor for a bulk purchase of all of the lessor's interests by the association and its members. The legislature further finds that it is necessary to clarify the powers of the boards of directors of associations of apartment owners to enter into purchase agreements with lessors to facilitate and encourage voluntary lease to fee conversions of condominium projects in an efficient and economical manner.

SECTION 2. Chapter 514C, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

"PART . VOLUNTARY CONVERSIONS

§514C- Definitions. As used in this part, unless the context requires otherwise:

"Lessor" means any or all of the fee simple owners and other persons having legal or equitable ownership interests in the leased fee interest appurtenant to the various condominium units in the condominium project and in the various apartment and ground leases including, but not limited to, any sublessor. The definition of "lessor" in section 514C-1 shall not apply to this part.

§514C- Power of association of apartment owners to negotiate, purchase, and sell lessor's interest. (a) The association of apartment owners may purchase the lessor's interest in the condominium project; provided that the declaration of condominium property regime shall either contain or be amended to include a provision authorizing the board of directors to effectuate such a purchase. If the lessor is also a condominium unit lessee, the lessor's lessee interest shall be disregarded in the computation of the percentage of condominium unit lessees needed to achieve the vote or written consent required to amend the declaration of condominium property regime.

(b) If the association of apartment owners is authorized to purchase the lessor's interest pursuant to this section, the following powers, in addition to any other existing powers, shall be conferred upon the association of apartment owners:

- (1) To purchase or otherwise acquire, own, improve, use, and deal in and with the lessor's interest or any or all undivided interests therein;
- (2) To incur liabilities, borrow money, and secure any of its obligations by mortgage or pledge all or any portion of its property, assessments, and funds to effectuate acquisition of the lessor's interest;
- (3) To assess, as a common expense, the condominium unit lessees for the expenses incurred in acquiring the lessor's interest, or to service any debt associated therewith; and
- (4) To sell the fee interest appurtenant to a condominium unit and acquired from the lessor by the association of apartment owners, to any condominium unit lessee or subsequent purchaser of such unit.

(c) No condominium unit lessee shall be compelled to purchase the portion of the fee interest of the property appurtenant to the lessee's condominium unit and acquired from the lessor by the association of apartment owners, but may instead pay

lease rent to the association of apartment owners together with the lessee's share of the common expenses incurred in acquiring the fee interest to the land, including any debt associated therewith."

SECTION 3. Chapter 514C, Hawaii Revised Statutes, is amended as follows:

1. By amending its title to read:

"[RIGHT OF FIRST REFUSAL] LEASE TO FEE CONVERSIONS FOR CONDOMINIUMS AND COOPERATIVE HOUSING CORPORATIONS"

2. By designating sections 514C-1 through 514C-8 as:

"PART I. RIGHT OF FIRST REFUSAL"

3. By amending section 514C-3 to read:

"[§514C-3] Improvements. The right of first refusal to purchase the leased fee interest in land created by this [chapter] part shall be deemed to include the right to purchase the interest of the seller in any and all improvements on such land, other than the leasehold interest in any unit as to which the seller is the holder of the leasehold interest."

4. By amending section 514C-4 to read:

"[§514C-4] Compliance with procedures not required when. Nothing in this [chapter] part shall prohibit any lessor and association of condominium owners or cooperative housing corporation from agreeing to the sale and purchase of the leased fee interest or any part thereof."

5. By amending section 514C-5 to read:

"§514C-5 Offer to other prospective purchasers; time limit. No lessor shall 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] part 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-6.5; provided that an offer made pursuant to sections 514C-2, 514C-3, and 514C-6.5 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."

6. By amending section 514C-6.5 to read:

"[§514C-6.5] Sales to individual lessees. Notwithstanding any other [provisions] provision in this [chapter,] part to the contrary, 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 corporation 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."

7. By amending section 514C-7 to read:

"**[[§514C-7]] Violations; voidable sale.** Any sale made that violates this [chapter] part shall be voidable at the option of the association of owners or cooperative housing corporation. If any sale is so voided, the association of owners or cooperative housing corporation shall then have the right to buy the interest which had been conveyed by virtue of such sale for the same price as pertained to the sale so voided, subject to the time restrictions contained in section 514C-5."

8. By amending section 514C-8 to read:

“[[§514C-8]] Exception. This [chapter] part shall not apply if the land under the condominium project or cooperative housing corporation subject to a leased fee interest is part of a larger tract of land and the lessor will not agree to sell the leased fee interest in the land in parts.”

SECTION 4. No purchase or conveyance of the leased fee interest made prior to the effective date of this Act to or by an association of owners in a good faith belief that the purchase or conveyance was valid, and no borrowing, mortgage, or pledge by an association of owners in connection therewith shall be invalid because it was without capacity or power to do such an act or to make or receive such conveyance, transfer, or loan. Nor shall any apartment owner be excused from paying the owner's share of the common expenses incurred in acquiring the leased fee interest to the land, or to service any debt associated therewith on account of any such lack of capacity or power.

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.

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

(Approved July 2, 1999.)