

## ACT 199

H.B. NO. 2413

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 it is necessary to amend the Hawaii Revised Statutes to address the powers of condominium associations in situations in which some lessees have already purchased their leased fee interests from the lessor.

The purpose of this Act is to empower condominium associations to purchase the remainder of the lessor's interest at the sole cost of the remaining lessees.

SECTION 2. Section 514C-22, Hawaii Revised Statutes, is amended to read as follows:

**“~~[§514C-22]~~ 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 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 the interest of any sublessor 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, except as provided in subsection (d), as a common expense, [the condominium unit lessees for] the expenses incurred in acquiring [the lessor's] and holding the leased fee interest, [or] and to service any debt associated therewith; and
- (4) To sell the leased fee interest [appurtenant to] in a condominium unit and acquired from the lessor by the association of apartment owners, to [any] the then condominium unit lessee or subsequent purchaser of such unit[-]; provided that if the lessee or subsequent purchaser declines to purchase the leased fee interest, the leased fee interest may be sold to other persons so long as reasonable disclosure is made of the association of apartment owners' intent to sell the leased fee interest to such other persons, and the disclosure includes a statement that the lessees may have no legal remedy if they subsequently wish to purchase the leased fee interest and the other persons refuse to sell or will sell only at a price unacceptable to the lessees.

(c) No condominium unit lessee shall be compelled to purchase [the portion of] the leased fee interest [of the property appurtenant to the lessee's] in such 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 leased fee interest [to the land,] in the condominium units in the project including any debt associated therewith.

(d) If some, but not all, lessees have purchased the leased fee interest in their condominium units directly from the lessor, (other than purchases by the lessor or the association of apartment owners), the association of apartment owners may undertake the purchase of all or any part of the leased fee interest in the remaining leasehold condominium units in the project in accordance with subsection (b); provided that:

- (1) Seventy-five per cent of the remaining lessees approve an amendment to the declaration authorizing the purchase of the leased fee interest by the association consistent with the requirements of this section;
- (2) All costs and expenses and all proceeds and benefits of acquiring and holding the leased fee interest and to service any debt associated therewith shall be separately assessed or credited to the condominium units of the remaining lessees in the same ratio that the common interest appurtenant to each remaining lessees' apartment bears to the total common interest appurtenant to all of the remaining lessees' condominium units;
- (3) The association of apartment owners shall sell the leased fee interest in a condominium unit only to the lessee of the condominium unit or to the permitted assigns or successors of the lessee; provided that if the lessee or the lessee's permitted assigns or successors decline to purchase the leased fee interest, the leased fee interest may be sold to other persons so long as reasonable disclosure is made of the association of apartment owners' intent to sell the leased fee interest to the other persons and the disclosure includes a statement that the lessees may have no legal remedy if they subsequently wish to purchase the leased fee interest and the other persons refuse to sell or will sell only at a price unacceptable to the lessees; and
- (4) The association of apartment owners, through its board of directors in the exercise of its authority, may decide not to accept an offer from the

lessor to sell all of the remaining portion of the lessor's interest to the association of apartment owners on the basis that the purchase is not financially feasible or is otherwise not in the best interests of the association. In that event, the board shall adopt a resolution containing written findings as to its reasons for not accepting the offer and shall distribute the resolution to the remaining lessees.

(e) If the association of apartment owners acquires all of the remaining portion of the lessor's interest in accordance with subsection (d), any debt associated therewith shall be secured only by the interests so acquired and by the common expense assessments upon the condominium units of the remaining lessees.

(f) For purposes of this section:

"Remaining lessees" means the lessees of condominium units in a condominium project who have not purchased the leased fee interest in their condominium units as of the effective date of the amendment referred to in subsection (d)(1).

"Condominium unit" has the same meaning as the term "apartment" as defined in section 514A-3."

SECTION 3. No purchase or conveyance of leased fee interest or allocation of costs made prior to the effective date of this Act, to or by an association of apartment owners in a good faith belief that the purchase, conveyance, or allocation was valid, and no assessment, borrowing, mortgage, or pledge by an association of apartment owners in connection therewith, shall be invalid because the association was without capacity or power to undertake the act or to make or receive the allocation, conveyance, transfer, or loan. No apartment owner shall 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 the association's lack of capacity or power.

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

SECTION 5. This Act shall take effect upon its approval.

(Approved June 25, 2002.)