

ACT 197

H.B. NO. 931

A Bill for an Act Relating to Affordable Housing.

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

SECTION 1. The legislature finds that the cost of living in Hawaii has been and continues to be high. A significant contributing factor to the high cost of living in

Hawaii is the high cost of housing, and it is the high cost of land that contributes significantly to the high cost of housing. Land, in common with other natural resources, is a finite resource, a fact particularly obvious in Hawaii. The shortage in the supply of land leads to higher land prices and housing costs, and creates a situation in which land is developed for higher-priced housing rather than affordable housing.

The Hawaii Land Reform Act, chapter 516, Hawaii Revised Statutes, was enacted to afford residential lessees of fee simple title to the leased fee reversionary interest in single family residential leasehold lots. The constitutionality of chapter 516, Hawaii Revised Statutes, was upheld by the United States Supreme Court in *Hawaii Housing Authority v. Midkiff*, 467 U.S. 229 (1984), and by the Hawaii Supreme Court in *Hawaii Housing Authority v. Lyman*, 68 Haw. 55, 704 P.2d 888 (1985). In these cases, the courts held that a legitimate public purpose for leasehold condemnation legislation existed, and the use of the power of eminent domain to accomplish this purpose was constitutional.

Since the *Midkiff* and *Lyman* cases were decided in 1984 and 1985, respectively, development and sale of single-family and multifamily housing on a leasehold basis has ceased for all practical purposes in Hawaii. The median price of a single-family home on the island of Oahu has increased to \$495,000 in December 2004. In contrast, under the housing and community development corporation of Hawaii's affordable housing guidelines for 2004, the sales price of a house affordable to a family of four with the median income of \$65,700 is \$276,200. There is a growing shortage of housing in Hawaii affordable to the general workforce, specifically, those families earning between approximately fifty to one hundred forty per cent of area median income. Workforce housing is affordable housing for which a priority is given in the marketing of such housing to employees, retirees, or members of the landowner or of an affiliate of the landowner; employees or retirees of governmental agencies or departments; seniors; and other low- and moderate-income households.

The legislature further finds that in addition to inflation, one factor attributed to the increased costs of both new single-family and multifamily housing in Hawaii is the cost of land and site improvements, since these costs must be paid at the time of initial sale. One means of increasing the supply and decreasing the price of housing in Hawaii is to develop projects on a leasehold rather than a fee simple basis. If for-sale housing were developed on a long-term leasehold basis, land costs could be capitalized over the term of the lease. Moreover, selling a house on a leasehold basis permits the lessor to control the potential appreciation on the housing over the long term, thereby sustaining the affordable price of the housing for subsequent buyers.

It is in the public interest for landowners to facilitate the creation of affordable housing and workforce housing. Selling affordable housing and workforce housing on a leasehold basis will help curb inflation and will keep the cost of housing at a level that will enable low- and moderate-income families to afford a decent and healthful standard of living. Major employers should be encouraged to attract workers by selling the leasehold residences for less than appraised value and with a capitalized lease rent that is less than a fair market return as a form of housing subsidy.

A lessor's sharing in a percentage of the appreciation on the resale of an affordable residential lot may be construed as lease rent for purposes of chapter 519, Hawaii Revised Statutes. Landowners and lessors will only lease land to be developed for affordable leasehold residential lots with a less than fair market return if these lots are excluded from leasehold conversion and ground lease rent control.

The legislature further finds that, because of the built-up nature of the surrounding neighborhoods, the development of workforce housing and affordable housing by the University of Hawaii at Manoa is a matter of statewide concern. Accordingly, the exemptions created by this Act are not intended to apply to

workforce housing and affordable housing developed by the University of Hawaii at Manoa at or in the vicinity of the Manoa campus, without further specific authorization from the legislature. The legislature intends, however, that the exemptions created by this Act shall apply to other University of Hawaii campuses on Oahu, including the John A. Burns school of medicine in Kakaako and the University of Hawaii West Oahu campus, as well as to University of Hawaii campuses on the neighbor islands.

The purpose of this Act is to encourage the development of workforce housing and affordable housing on leased residential lots by prohibiting lessees under sustainable affordable leases from exercising rights granted under certain sections of chapters 516 and 519, Hawaii Revised Statutes.

SECTION 2. Chapter 516, Hawaii Revised Statutes, is amended by adding four new sections to be appropriately designated and to read as follows:

“§516-A Exemption for sustainable affordable developments. Notwithstanding any law to the contrary, no lessee under a sustainable affordable lease may exercise the rights granted to a lessee by part II and sections 516-63, 516-65, and 516-66. The lessee under a sustainable affordable lease may exercise rights under section 516-70; provided that in no event shall compensation to the lessee for on-site improvements at the termination or expiration of the lease term exceed the lessee’s share of the maximum sales price of a residential lot, including all buildings and improvements, on resale as determined pursuant to paragraph (2) of the definition of “sustainable affordable lease” in section 516-1. In addition, sections 516-5 and 516-83 shall not apply to the fee owner and lessor of land in a sustainable affordable development.

§516-B Certification. The lessor of a sustainable affordable development shall certify the lessor’s qualification for the exemption established in section 516-A at the time of the delivery of the first sustainable affordable lease by filing an affidavit with the registrar of the bureau of conveyances or assistant registrar of the land court, as appropriate, that:

- (1) Declares the percentage of all the residential lots in the development tract that will have their initial sales prices limited in accordance with directly applicable state or county law, regulation, policy, or agreement, such that households earning not more than the required percentage of the median income for the applicable county will spend no more than the allowable percentage of their gross income for housing costs; provided that if the percentage of residential lots is less than thirty per cent, the state or county agency’s approval thereof shall also be set forth;
- (2) Declares the percentage of all the residential lots in the development tract that will have their initial sales prices and resale sales prices limited to eighty per cent of the fair market value of the residential lots in fee, including all buildings and improvements, unencumbered by the lease and describing the calculation of the difference; provided that if the percentage of residential lots is less than fifty-one per cent, the state or county agency’s approval thereof shall also be set forth; and
- (3) Sets forth the provisions in the sustainable affordable leases that limit the resale price of the residential lot, including all buildings and improvements, and entitle the lessor to a share of the appreciation in the residential lot, including all buildings and improvements.

§516-C Recordkeeping. A lessor of a sustainable affordable development shall maintain during the term of all sustainable affordable leases records regarding income levels and other qualifications of buyers of sustainable affordable leases at the time of purchase.

§516-D University of Hawaii at Manoa. The legislature identifies the creation of a sustainable affordable development by or on land owned by or set aside to the University of Hawaii at Manoa to be a matter of statewide concern because of the built-up nature of the surrounding community. The University of Hawaii at Manoa shall not create a sustainable affordable development by entering into any sustainable affordable lease or by authorizing any land owned by or set aside to the University of Hawaii at Manoa to be demised under a sustainable affordable lease prior to enactment of a law specifically authorizing the University of Hawaii at Manoa to enter into a sustainable affordable lease or to demise any land owned by or set aside to the University of Hawaii at Manoa under a sustainable affordable lease.”

SECTION 3. Section 516-1, Hawaii Revised Statutes, is amended by adding two new definitions to be appropriately inserted and to read as follows:

“‘Sustainable affordable development’ means a development tract that satisfies all of the following requirements:

- (1) The sales price at the time of initial sale of at least thirty per cent of all the residential lots in the development tract shall be limited in accordance with directly applicable state or county law, regulation, policy, or agreement, such that households earning not more than the required percentages of the median income for the applicable county (according to the directly applicable law, regulation, policy or agreement) will be required to spend no more than the allowable percentage of their gross incomes for housing costs as determined by secondary mortgage market standards or as otherwise agreed, all as determined as of the time of the initial sale of the residential lots;
- (2) The sales price at the time of the initial sale of at least fifty-one per cent of the residential lots in the development tract, including the lots subject to the requirements of paragraph (1), and the sales price at the time of a resale of at least fifty-one per cent of all the residential lots in the development tract, shall be no higher than eighty per cent of the fair market value of the residential lots in fee at the time of initial sale or resale, as appropriate, including all buildings and improvements, unencumbered by the restrictions of the lease;
- (3) All residential lots sold in satisfaction of paragraph (1) or (2) shall be leased under sustainable affordable leases;
- (4) The state or county agency that approves the sustainable affordable development may reduce the minimum percentage of residential lots to be sold in satisfaction of paragraph (1) or (2) upon a showing that the sustainable affordable development comprises a portion of a housing project that includes other housing, which together with the residential lots comprising the sustainable affordable development, satisfies the state or county agency’s affordable housing requirements as set forth in the applicable state or county law, regulation, policy, or agreement; and
- (5) For the purposes of this chapter, the residential lots in a development tract comprising a sustainable affordable development are not required to be in a single contiguous area as long as all non-contiguous lots are:
 - (A) Within a ten-mile radius of each other; and

(B) Leased by the same fee owner under a sustainable affordable lease.

“Sustainable affordable lease” means a residential lot lease in a sustainable affordable development that satisfies all of the following requirements:

- (1) The lease provides for a consideration to the fee owner below a fair market return on the fair market value of the land; provided that compensation to the fee owner for land, including lease rent, shall be either:
 - (A) Totally capitalized into the initial sales price for the residential lot, including all buildings and improvements; or
 - (B) Partially capitalized with a share of appreciation paid to the lessor upon resale of the residential lot;
- (2) In order to maintain the continued affordability of the residential lot, the lease limits the lessee’s maximum sales price on the residential lot upon resale, including all buildings and improvements, to the lesser of:
 - (A) The fair market value of the residential lot, including all buildings and improvements, encumbered by the restrictions of the lease; or
 - (B) The sum of:
 - (i) The lessee’s purchase price for the residential lot, including all buildings and improvements;
 - (ii) Any appreciation on the residential lot, including all buildings and improvements as measured by multiplying the amount in clause (i) by the increase in the consumer price index for all urban consumers as determined by the United States Department of Labor for the applicable county (or if not published for the county, then for the State), from the date of the purchase to the date of the contract for resale; and
 - (iii) The fair market value of all lessor-approved capital improvements made by the lessee; and
- (3) The lease may allow the lessor to receive a share of the appreciation in accordance with paragraph (2), as agreed to by the lessor and lessee, and as set forth in the sustainable affordable lease.”

SECTION 4. Chapter 519, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§519- Exemption for sustainable affordable developments. Notwithstanding any other law to the contrary, no lessee under a sustainable affordable lease as defined in section 516-1 and qualified under section 516-B may exercise the rights granted to a lessee under section 519-2.”

SECTION 5. In codifying the new sections added by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 6. New statutory material is underscored.¹

SECTION 7. This Act shall take effect on July 1, 2005.

(Approved July 6, 2005.)

Note

1. Edited pursuant to HRS §23G-16.5.