

Hawai'i Revised Statutes: Chapter 514C
Lease to Fee Conversions for Condominiums and Cooperative Housing Corporations

Part I. Right of First Refusal

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Chapter heading amended by L 1999, c 241, §3(1).

Cross References

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Part I. Right of First Refusal

Note

Sections 514C-1 through 514C-8 designated as Part I by L 1999, c 241, §3(2).

§514C-1 Definitions. For purposes of this chapter unless the context indicates otherwise:

"Condominium" means the ownership of single units, with common elements, located on property within the condominium property regime.

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"Condominium project" means a real estate condominium project; a plan or project whereby a condominium of two or more units located within the condominium property regime have been sold or leased or are offered or proposed to be offered for sale or lease.

"Condominium unit lessee" means an individual or individuals owning or leasing a condominium apartment or unit situated on leasehold land.

"Cooperative housing corporation" means a corporation having one and only one class of stock outstanding; 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 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.

"Cooperative project" means a real estate cooperative housing corporation project; a plan or project whereby two or more apartments located in a building owned by a cooperative housing corporation have been leased or are offered or proposed to be offered to be leased.

"Cooperative unit lessee" means a shareholder of a cooperative housing corporation having a cooperative project located on leasehold land.

"Lessor" means the owner of the fee simple title to land which is leased to condominium lessees or a cooperative housing corporation, including a life tenant with a remainder over, vested or contingent, and a holder of a defeasible estate, and the holder's heirs, successors, legal representatives, and assigns. [L 1988, c 298, pt of §1; am L 1989, c 261, §17; am L 1990, c 34, §12; am L 2008, c 28, §32]

[§514C-2] Right of first refusal. §514C-2 Right of first refusal. When the leased fee interest in land under a condominium project or cooperative project or any part thereof is to be sold to any party other than the association of owners or the cooperative housing corporation, the seller shall first provide the board of directors of the association of owners or the cooperative housing corporation 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 its intent to sell that interest, together with a complete and correct copy of the purchaser's written offer, which offer shall contain the full and complete terms thereof. The association of owners or cooperative housing 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. [L 1988, c 298, pt of §1; am L 2008, c 28, §33]

§514C-3 Improvements. The right of first refusal to purchase the leased fee interest in land created by this 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

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interest in any unit as to which the seller is the holder of the leasehold interest. [L 1988, c 298, pt of §1; am L 1999, c 241, §3(3)]

§514C-4 Compliance with procedures not required when. Nothing in this 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. [L 1988, c 298, pt of §1; am L 1999, c 241, §3(4)]

§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 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 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 the seller. [L 1988, c 298, pt of §1; am L 1993, c 326, §2; am L 1999, c 241, §3(5); am L 2008, c 28, §34]

§514C-6 Powers of association of apartment owners and cooperative housing corporation. (a) The association of owners under chapter 514A or 514B, or cooperative housing corporation may purchase the leased fee interest in the land; provided that at least sixty-seven per cent of the condominium unit lessees or cooperative unit lessees approve of the purchase. If the seller is also a condominium unit lessee or cooperative unit lessee, the seller's interest shall be disregarded in the computation to achieve the sixty-seven per cent requirement. As used herein:

(1) Sixty-seven per cent of the condominium unit lessees means the lessees of units to which sixty-seven per cent of the common interests are appurtenant; and

(2) Sixty-seven per cent of the cooperative unit lessees means shareholders having at least sixty-seven per cent of the shares in the cooperative housing corporation.

(b) If the association of owners or cooperative housing corporation accepts the seller's offer to purchase the leased fee interest in the land, the following powers, in addition to any other powers, shall be conferred upon the association of owners or cooperative housing corporation:

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(1) To purchase or otherwise acquire, own, improve, use, and otherwise deal in and with the leased fee interest to the land or any or all undivided interests therein;

(2) To incur liabilities, borrow money, and secure any of its obligations by mortgage or pledge of all or any portion of its property, assessments, and funds;

(3) To assess, in a fair and equitable manner, the condominium unit lessees or cooperative unit lessees for the expenses incurred in acquiring the leased fee interest to the land, or to service any debt associated therewith; and

(4) To sell the leased fee interest appurtenant to a condominium apartment or unit to any condominium apartment or unit lessee or subsequent purchaser of such unit.

(c) No conveyance of the leased fee interest to or by an association of owners or cooperative housing corporation, and no borrowing, mortgage, or pledge by an association of owners or cooperative housing corporation 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.

(d) No condominium unit lessee shall be compelled to participate in the purchase of the leased fee interest of the property, but may instead pay lease rent to the association of owners. [L 1988, c 298, pt of §1; am L 2006, c 273, §30; am L 2008, c 28, §35]

Revision Note

Subsections (b) to (d) redesignated pursuant to §23G-15(1).

Case Notes

Subsection (a) requires lessees of condominium units to which 75 per cent of the common interests are appurtenant to approve of a leased fee purchase; because subsection (a) is silent on the method of calculating the votes of multi-owner units, the bylaws of an association of apartment owners may govern on how the votes are to be calculated so long as not violative of any law; if any defects affected the approval process, the 75 per cent requirement was satisfied by the lessees' subsequent ratification of the previous vote when they executed deeds necessary for conversion. 108 H. 2, 116 P.3d 644.

Under subsection (a)(3), an association of apartment owners may assess a "conversion" surcharge in "a fair and equitable manner" against lessees who oppose a fee purchase. 108 H. 2, 116 P.3d 644.

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§514C-6.5 Sales to individual lessees. Notwithstanding any other provision in this 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 owners or cooperative housing corporation has written authorization to represent its members, then the association of owners or cooperative housing 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 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 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 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, any amendment thereto, or written authorization authorizing the board of directors of the association of owners or cooperative housing corporation to represent the individual lessees in the lease-to-fee conversion, each lessee shall have the right to represent oneself in such lease-to-fee conversion by giving written notice of such desire to the lessor and the board of directors; and

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(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. [L 1993, c 326, §1; am L 1999, c 241, §3(6); am L 2008, c 28, §36]

§514C-7 Violations; voidable sale. Any sale made that violates this part shall be voidable at the option of the association of owners or the 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. [L 1988, c 298, pt of §1; am L 1999, c 241, §3(7)]

§514C-8 Exception. (a) This 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.

(b) If the land under the condominium is owned jointly by lessors, all of whom qualify as tax-exempt charitable organizations as defined by section 501(c)(3) of the Internal Revenue Code of 1986, as amended, the sale by one co-lessor to another co-lessor of its interest in the land under the condominium shall not be subject to the provisions of this chapter. [L 1988, c 298, pt of §1; am L 1999, c 241, §3(8); am L 2005, c 91, §1]

Part II. Voluntary Conversions

[§514C-21] 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. [L 1999, c 241, pt of §2]

§514C-22 Power of association of apartment owners to negotiate, purchase, and sell lessor's interest. (a) The association of owners under chapter 514A or 514B 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

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to achieve the vote or written consent required to amend the declaration of condominium property regime.

(b) If the association of 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:

(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, unit, 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 of 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 expenses incurred in acquiring and holding the leased fee interest, and to service any debt associated therewith; and

(4) To sell the leased fee interest in a condominium unit and acquired from the lessor by the association of owners, to 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's 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 leased fee interest in such condominium unit and acquired from the lessor by the association of owners, but may instead pay lease rent to the association together with the lessee's share of the common expenses incurred in acquiring the leased fee interest 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 owners), the association 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:

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(1) Sixty-seven 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 or unit bears to the total common interest appurtenant to all of the remaining lessees' condominium units;

(3) The association of 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's 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 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 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 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" or "unit" as defined in section 514A-3 or 514B-3. [L 1999, c 241, pt of §2; am L 2002, c 199, §2; am L 2004, c 164, §20; am L 2006, c 273, §31; am L 2008, c 28, §14]