

JAN 18 2008

A BILL FOR AN ACT

RELATING TO HOUSING.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

- 1 SECTION 1. This Act addresses the State's housing shortage
2 by:
- 3 (1) Providing an anti-speculation capital gains tax on
4 real property to retain and support Hawaii's rental
5 market;
- 6 (2) Allowing state housing tenants to share an apartment
7 and allowing tenants of federally subsidized housing
8 to qualify for certain benefits;
- 9 (3) Allowing a lessee under a long-term lease to purchase
10 the fee interest in the land for single-family
11 residential dwellings, condominiums, or cooperatives;
12 and
- 13 (4) Directing the Hawaii public housing authority to
14 expand certain eligibility requirements for the family
15 self-sufficiency program and appropriating funds
16 therefor.



1 SECTION 2. The Hawaii Revised Statutes is amended by
2 adding a new chapter to be appropriately designated and to read
3 as follows:

4 "CHAPTER

5 LANDLORD AND TENANT - HAWAII LAND LAW

6 § -1 Definitions. As used in this chapter, unless the
7 context requires otherwise:

8 "Fee simple owner" or "fee owner" means the person who owns
9 the fee simple title to land that is leased, including a life
10 tenant with a remainder over, vested or contingent, and a holder
11 of a defeasible estate, and the holder's heirs, successors,
12 legal representatives, and assigns.

13 "Lease" means a conveyance of land or an interest in land,
14 by a fee simple owner as lessor, or by a lessee or sublessee as
15 sublessor, to any person, in consideration of a return of rent
16 or other recompense, for a term, measured from the initial date
17 of the conveyance, of three or five years or more as provided in
18 this chapter, including any periods for which the lease may be
19 extended or renewed at the option of the lessee, for all leases
20 executed after the effective date of this chapter.



1 "Lessee" means any person to whom land is leased or
2 subleased for residential purposes, and that person's heirs,
3 successors, legal representatives, and assigns.

4 "Redemption" means the option provided by this chapter to
5 any land lessee to buy the fee-simple estate. Redemption
6 includes all leases of residential real property including but
7 not limited to residential apartment cooperatives or
8 condominiums, if for a term of three years or more including
9 extensions, renewals, or other lease period accumulating to any
10 particular lessee or tenant.

11 The terms "lessor", "lessee", "fee simple owner", and "fee
12 owner" include corporations, firms, associations, trusts,
13 estates, and the State or counties. When more than one person
14 is the lessor, lessee, fee simple owner, or legal and equitable
15 owner of leased land, the terms apply to each, jointly and
16 severally. The additional definitions of chapter 514A are
17 adopted and made a part of the definitions provided in this
18 section for all purposes to the extent that they do not conflict
19 with the purposes of this chapter.

20 **§ -2 Applicability.** This chapter applies to all leased
21 lands which are owned or held privately or owned by the State
22 and its political subdivision, except Hawaiian home lands that



1 are subject to article XII of the Constitution of the State of
2 Hawaii and lands owned or held by the federal government. This
3 chapter supersedes chapter 516, Hawaii Revised Statutes. This
4 chapter is not meant to supersede or preclude any additional
5 remedy at law available to lessees not specified herein. Where
6 the definitions, rights, or the benefits of this chapter
7 conflict with those of any other statute, the definitions,
8 rights, or benefits of this chapter shall prevail.

9 **§ -3 Redemption.** All leases of residential real
10 property, if for a term of three years or more including
11 extensions, renewals, or any other lease period accumulating to
12 any particular lessee or tenant may be terminated at the option
13 of the lessee or tenant after notice of one month to the
14 landowner, upon payment to the landowner of a sum equal to the
15 capitalized value of the rent due under or reserved by the lease
16 after the expiration of the minimum lease term specified above
17 from the date of the lease, or any sublease as applicable
18 thereof, at a rate of twelve per cent simple interest per year,
19 and upon the payment to have the fee simple title to the
20 property vest in the lessee or tenant.

21 **§ -4 No estoppel or waiver.** The rights granted to
22 lessees by this chapter shall be effective, notwithstanding any



1 provision in any lease or contract to the contrary. No lessee
2 shall be estopped by any covenant, term, condition, or contract,
3 however worded, from claiming the rights granted to the lessee
4 by this chapter or to have waived that right. Any provision in
5 any lease or contract that is contrary to the intent of the
6 purpose of this chapter is void.

7 **§ -5 Trusts and estates.** The rights granted to lessees
8 by this chapter shall be effective, notwithstanding any
9 condition or provision to the contrary in any instrument
10 creating any life tenancy, defeasible fee, estate, or trust,
11 regardless of whether the tenancy, fee, estate, or trust was in
12 effect prior to the effective date of this chapter or created
13 thereafter; and the life tenant, holder, officer, or trustee of
14 any tenancy, defeasible fee, estate, or trust may convey
15 automatically renewable leases forever for ninety-nine years or
16 more, and shall perform all acts required of the life existence
17 or thereafter executed that shall be construed to be in
18 conformity with the intent and purpose of this chapter.

19 No trustee, officer, or agent of a lessor or other legal or
20 equitable owner, while acting pursuant to this chapter, shall be
21 deemed to be acting in bad faith or to have committed a breach
22 of trust.



1 **§ -6 Discrimination.** No person shall be denied the
2 right to become a lessee of any real property because of the
3 person's race, religion, sex, ancestry, political affiliation or
4 opinions, or physical handicap.

5 **§ -7 Free assignability.** Except as otherwise provided
6 in this chapter, a lessee may assign the lessee's lease at any
7 time without the approval or consent of the lessor, and the
8 assignee shall have the same rights and obligations under the
9 lease as the original lessee; provided that no assignment shall
10 be effective to transfer any interest in the lease unless the
11 lessor has received:

12 (1) Either a true executed copy of the assignment or
13 written notice thereof;

14 (2) A reasonable service charge, except in the case of an
15 assignment by way of mortgage or assignment to, or by
16 the Federal Housing Administration, the Department of
17 Veterans Affairs, or the Federal National Mortgage
18 Association, or a foreclosure of mortgage of
19 assignment in lieu of foreclosure; and

20 (3) The written undertaking of the assignee to perform all
21 obligations of the lessee under the lease which may be
22 incorporated in the assignment.



1 No assignment shall release the assignor from liability under
2 the lease unless the lessor consents in writing to the
3 assignment. A consent to the assignment shall be deemed a
4 consent to the release of the assignor from liability under the
5 lease. The lessor shall not require payment of any money for
6 the lessor's consent except the service charge nor withhold the
7 consent unreasonably. Any person acquiring the leasehold estate
8 in consideration of the extinguishment of a debt secured by
9 mortgage of the lease or through foreclosure sale, judicial, or
10 otherwise, shall perform the obligations imposed on the lessee
11 by the lease only during the period the person has possession or
12 ownership of the leasehold estate.

13 **§ -8 Forfeiture.** No forfeiture of the lessee's interest
14 in a leasehold shall be declared by the lessor for the lessee's
15 failure to pay the rent or otherwise to perform the lessee's
16 obligations under the lease, unless the lessor has given written
17 notification to the lessee of the default and given the lessee
18 at least thirty days to correct the default.

19 **§ -9 Penalty.** Any person who violates this chapter
20 shall be:

21 (1) Fined not more than \$5,000 or the amount of the lease
22 redemption price (whether ripe for redemption or not)



1 whichever is higher, provided the fine is not less
2 than \$1,000;

3 (2) Imprisoned not more than one year; or

4 (3) Both.

5 The civil penalty may be enforced by any party to a real
6 property lease by civil suit.

7 **§ -10 No recovery on illegal documents.** Any covenant or
8 clause contained in any lease made by any person, association,
9 firm, or corporation in violation of this chapter is declared to
10 be illegal; provided that the illegal covenant or clause shall
11 not affect the validity of the remainder of the lease.

12 **§ -11 Zoning changes.** A lessor, fee owner, or any legal
13 or equitable owner that may be subject to this chapter, who
14 applies for a change in zoning in the State shall notify all of
15 the lessor's, fee owner's, or legal or equitable owner's lessees
16 within three-fourths miles of the land proposed to be rezoned,
17 of the application and its contents at least thirty days before
18 filing the application before any zoning authority.

19 **§ -12 Severability.** If any part, section, sentence,
20 clause, or phrase of this chapter, or its application to any
21 person or transaction or other circumstances, is for any reason
22 held to be unconstitutional or invalid, the remaining parts,



1 sections, sentences, clauses, and phrases of this chapter, or
2 the application of this chapter to other persons or transactions
3 or circumstances, shall not be affected. The legislature hereby
4 declares that it would have enacted this chapter and each part
5 section, clause, or phrase thereof, irrespective of the fact
6 that any one or more parts, sections, sentences, clauses, or
7 phrases of this chapter, or its application to any person or
8 transaction or to other circumstances, is declared
9 unconstitutional or invalid.

10 **§ -13 Lawful lease terms.** Leases of real property dated
11 after the enactment of this chapter are for a period of ninety-
12 nine years if written for any period less than ninety-nine
13 years, and are automatically renewable forever whether the lease
14 so specifies or not."

15 SECTION 3. Chapter 235, Hawaii Revised Statutes, is
16 amended by adding a new section to be appropriately designated
17 and to read as follows:

18 "§235- Anti-speculation capital gains tax on real
19 property. (a) In addition to the capital gains tax imposed
20 under this chapter, there shall be an anti-speculation capital
21 gains tax on the net capital gains realized by a seller of real



1 property, less commissions, fees, and other charges, if any,
2 related to the sale. The tax shall be as follows:

3 (1) If the real property was held by the seller for less
4 than six months prior to the sale, the tax shall be
5 sixty per cent of the capital gains tax owed;

6 (2) If the real property was held by the seller for six
7 months but less than twelve months prior to the sale,
8 the tax shall be thirty per cent of the capital gains
9 tax owed; or

10 (3) If the real property was held by the seller for twelve
11 months up to and including twenty-four months, the tax
12 shall be fifteen per cent of the capital gains tax
13 owed.

14 (b) This section shall not apply to real property sold to
15 provide affordable rental housing for a period of not less than
16 ten years to a resident earning less than one hundred forty per
17 cent of the median Hawaii income, as determined by the
18 department of taxation.

19 (c) The sale of unimproved real property shall not be
20 subject to this section, but shall be determined under section
21 235-51(f).



1 (d) The department shall deposit all tax realizations
 2 pursuant to this section into the rental housing trust fund
 3 under section 201H-202.

4 (e) The department of taxation may adopt rules pursuant to
 5 chapter 91 to effectuate this section."

6 SECTION 4. Section 201H-202, Hawaii Revised Statutes, is
 7 amended by amending subsection (c) to read as follows:

8 "(c) The following may be deposited into the fund:
 9 appropriations made by the legislature, private contributions,
 10 moneys derived from the anti-speculation capital gains taxes
 11 under section 235- , repayment of loans, interest, other
 12 returns, and moneys from other sources."

13 SECTION 5. Section 235-51, Hawaii Revised Statutes, is
 14 amended by amending subsection (f) to read as follows:

15 "(f) [~~It~~] Except as provided under section 235- , if a
 16 taxpayer has a net capital gain for any taxable year to which
 17 this subsection applies, then the tax imposed by this section
 18 shall not exceed the sum of:

- 19 (1) The tax computed at the rates and in the same manner
 20 as if this subsection had not been enacted on the
 21 greater of:



1 (A) The taxable income reduced by the amount of net
2 capital gain, or

3 (B) The amount of taxable income taxed at a rate
4 below 7.25 per cent, plus

5 (2) A tax of 7.25 per cent of the amount of taxable income
6 in excess of the amount determined under paragraph
7 (1).

8 This subsection shall apply to individuals, estates, and
9 trusts for taxable years beginning after December 31, 1986."

10 SECTION 6. Section 356D-155, Hawaii Revised Statutes, is
11 amended by amending subsection (a) to read as follows:

12 "(a) For purposes of carrying out this part, the authority
13 shall establish criteria and procedures for determining the
14 eligibility of tenants and rental charges, including criteria
15 and procedures with respect to periodic review of the tenant's
16 income and periodic adjustment of rental charges[-]; provided
17 that the authority shall not establish criteria that denies rent
18 supplement benefits:

19 (1) Based on the number of persons sharing a bedroom in an
20 apartment; or

21 (2) To tenants in housing subsidized by the federal
22 Department of Housing and Urban Development.



1 The authority shall issue, upon the request of a housing
2 owner, certificates as to the income of the individuals and
3 families applying for admission to, or residing in, dwellings of
4 that owner."

5 SECTION 7. The Hawaii public housing authority shall
6 expand enrollment in the family self-sufficiency program by
7 increasing income eligibility requirements for participants and
8 expanding eligibility requirements to include tenants of
9 Department of Housing and Urban Development housing.

10 The Hawaii public housing authority may adopt rules
11 pursuant to chapter 91 to effectuate this section.

12 SECTION 8. There is appropriated out of the general
13 revenues of the State of Hawaii the sum of \$ or so much
14 thereof as may be necessary for fiscal year 2008-2009 for the
15 Hawaii public housing authority to expand enrollment in the
16 family self-sufficiency program by increasing income eligibility
17 requirements for participants and expanding eligibility
18 requirements to include tenants of Department of Housing and
19 Urban Development housing.

20 The sum appropriated shall be expended by the Hawaii public
21 housing authority for the purposes of this Act.



1 SECTION 9. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun, before its effective date.

4 SECTION 10. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 11. This Act shall take effect upon its approval;
7 provided that:

- 8 (1) Section 8 shall take effect on July 1, 2008; and
9 (2) Sections 3, 4, and 5 shall apply to taxable years
10 beginning after December 31, 2007.

11

INTRODUCED BY: Carol Freeman



Report Title:

Public Housing; Income Tax; Real Property; Anti-speculation;
Hawaii Land Law

Description:

Prohibits public housing policies that deny rent supplement benefits based on the number of persons sharing a bedroom in an apartment or whether tenants reside in Department of Housing and Urban Development subsidized housing. Assesses a graduated anti-speculation tax on the capital gains realized on real property held for less than 24 months before sold. Provides lessees under a long-term residential lease the right to purchase the fee simple title to the leased land. Directs the HPHA to expand the eligibility requirements for the family self-sufficiency program and appropriates funds therefor.

