

Attention: - A public hearing on Senate Bill 3196 Relating to "*Right of First Refusal*" HRS 514-C2 is scheduled for Monday February 2, 2008 at 9:00 am in Conference Room 229.
S.B. 3196 Grants lessees in condos and coops a right of first refusal to buy the land under their homes contingent upon a lessor displaying an objective intent to sell or its acceptance of an offer to purchase.

Background:

This Bill, introduced by Senator Colleen Hanabusa, on Jan. 23rd, is a last minute attempt to contribute additional clarification and strength to the intention behind the "Right of First Refusal" law, HRS 514-C2.

HRS 514-C2, passed in 1988, intended to give the "Right of First Refusal" to the leasehold owners of condominium, and cooperative housing corporations, by guaranteeing them the opportunity to purchase the land under their buildings if the land-owner had the intention of selling the property. The present wording of 514-C2 does not properly protect this right of the lessees in the manner that our legislators had intended. It has been demonstrated in the recent case of Kaneohe Ranch vs. The Kailuan, that a large land-owner, such as Kaneohe Ranch, can effortlessly circumvent this law by simply letting the lease expire.

The ruling on this case, by recently appointed Circuit Court Judge, Glenn Kim, ordered the families of The Kailuan, to vacate their homes by Feb. 15th. Judge Kim also ordered that if the Kailuan families wanted to stay the eviction, and remain in their homes during the appeal process, they would have to obtain a \$4,000,000.00 supersedeas bond.

The apartment owners at The Kailuan are not only faced with having to abandon their homes (as well as their equity), but... as soon as they move out they are faced with the very real possibility that Kaneohe Ranch will simply knock down their red brick buildings, even though they are pursuing an appeal.

Remember, this is a precedent setting case. The outcome of this case will probably effect every condominium leasehold association. There are many loopholes and legal maneuvers that landowners can use to win their cases. Take for example the supersedeas bond of \$4 Million. This is an unsurmountable obstacle confronting the Kailuan which prevents them from exercising their rights to stay the eviction order. For more information, Google "supersedeas bonds".

This Judge ruled hard on the LETTER of the law, NOT the SPIRIT of the law, and his ruling demonstrates the continuing influence and power that the needs and wishes of Hawaii's influential land-owning families and corporations still wield.

In his book; "Land and Power In Hawaii", Gavan Daws writes about the earlier history regarding this power-structure, its adverse effect on families that do not own the land under their homes and the various legislative measures that have been enacted to give lessees a more equitable opportunity to purchase land in fee-simple. Daws refers to this power-structure as the Oligopoly. (This seems to be a uniting of the words oligarchy and monopoly.) It is a word well tailored to this circumstance. It is now necessary for Hawaii's lease-hold condominium owners to wake up to the loopholes and weaknesses in the existing HRS 514c law and put their heads together and help their legislators to come up with the correct wordage for SB3196, address these inadequacies.

This Bill hopefully will reinforce the "intention" of HRS 514-C2. It needs to be fashioned with serious consideration as to how to make it fair and yet enforceable. There are currently several problems with the enforceability of HRS 514-C2, two of which are:

1. A landowner can easily circumvent the intent of HRS 514-C2 by letting the lease run out.
2. Secret deals to sell the land can be made while the lease is in effect and no offer would be extended to the lessees.

The pending 3196 legislation, proposes (on lines 5 through 8) to give lessees a "two year period after termination of the lease..." in which to have the opportunity of the "right of First refusal". Perhaps this intent to strengthen HRS 514-C2 has to do with the inconvenience to the lessor of having to wait 2 years after the lease runs out before selling to some buyer other than the condo or coop association. It is simple minded to think that this wordage strengthens the "right of first refusal" law, except in the current case of The Kailuan vs Kaneohe Ranch where it would put The Kailuan in a position of being

able to delay the obvious intentions of Kaneohe Ranch to sell the land to D.R.Horton. This would end up delaying demolition and construction.

However, the obvious weakness in SB3196 is the same as in HRS514-C2. All that the land-owner has to do(after waiting for the lease to expire)is to keep the apartments rented on a month-to-month basis for the next two years, and then sell the land to whomever they want. The apartment owners still lose their equity, and get no opportunity to buy the land. They still lose everything.

Condo and Coop Associations can't afford to be so nearsighted during the crafting of SB3196...and neither can the Legislature. But Condo & Coop lessees have to take the responsibility to help shape SB3196 into a real backbone for HRS 514-C. What kind of fair language can you put together to help give SB3196 some effectiveness...?!

Report Title:

Leasehold Land; Termination of Rights

Description:

Grants lessees a right of first refusal contingent upon a lessor displaying an objective intent to sell or its acceptance of an offer to purchase.

THE SENATE
TWENTY-FOURTH LEGISLATURE, 2008
STATE OF HAWAII

S.B. NO. 3196

A BILL FOR AN ACT

RELATING TO LEASE TO FEE CONVERSION.

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

SECTION 1. Section 514C-2, Hawaii Revised Statutes, is amended to read as follows:

"[~~§~~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] When a lessor has displayed an objective intent to sell, or has accepted a written offer to purchase prior to or within two years after the termination of the lease with 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 apartment 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."

SECTION 2. Section 514C-5, Hawaii Revised Statutes, is amended to read as follows:

"§514C-5 Offer to other prospective purchasers; time limit. No lessor who has displayed an objective intent to sell, or who has accepted a written offer to purchase prior to or within two years after the termination of the lease 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 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."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

INTRODUCED BY: _____

(Point #2) Senate Bill 3196, page 2, amended lines 8-10, to HRS 514-C5
(a criticism)

The newly amended version of 514-C5 now reads; “No lessor who has displayed an objective intent to sell, or has accepted a written offer to purchase prior to or within two years after the termination of the lease shall sell the leased fee interest in any land under a condominium project or cooperative project”.....“until a right of first refusal for the purchase of that interest has been offered as required”.....

The new wording in this section of SB3196, which amends HRS 514-C5, contains the same vulnerability as is found on page 1 of SB3196, lines 5-8, which amends HRS 514-C2.

In addition to this weakness, there is the problem of “interpretation” of certain words and passages, like.....“When a lessor has (displayed an objective intent to sell), or has accepted a written offer to purchase, prior to or within 2 years after the termination of the lease, with anyone other than the association owners”.....

WHAT CONSTITUTES “DISPLAYING AN OBJECTIVE INTENT TO SELL” ?

Can there be some examples...or definitions applied to this wordage?