

JAN 18 2013

A BILL FOR AN ACT

RELATING TO REAL PROPERTY.

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

1 SECTION 1. The Hawaii Revised Statutes is amended by
2 adding a new chapter to chapter 481, Hawaii Revised Statutes, to
3 be appropriately designated and to read as follows:

4 **"CHAPTER 481**

5 **LEASE-PURCHASE AGREEMENTS FOR REAL PROPERTY**

6 § -1 **Definitions.** As used in this chapter:

7 "Advertisement" means a commercial message in any medium
8 that aids, promotes, or assists, directly or indirectly, a
9 lease-purchase agreement covered under this chapter.

10 "Consummation" means the time a tenant becomes
11 contractually obligated under a lease-purchase agreement.

12 "Landlord" shall have the same meaning as in section 521-8.

13 "Lease-purchase agreement" means a real property lease for
14 a fixed period of time with an obligation for the tenant to
15 purchase the property at the end of the lease period where a
16 portion of the rent is applied to the future payment.

17 "Owner" shall have the same meaning as in section 521-8.

18 "Tenant" shall have the same meaning as in section 521-8.



1 § **-2 Recording of agreement.** Before any payment is due
2 from a tenant pursuant to a lease-purchase agreement, the
3 landlord shall record the lease-purchase agreement with the
4 bureau of conveyances and furnish the tenant with a file-marked
5 copy of the recorded lease-purchase agreement.

6 § **-3 Disclosure requirements.** (a) The landlord shall
7 disclose to the tenant the information required by this chapter.
8 In a transaction involving more than one landlord, only one
9 landlord need make the disclosures, but all landlords shall be
10 bound by these disclosures. The disclosures shall be made
11 before consummation of the lease-purchase agreement.

12 (b) The disclosures shall be made clearly and
13 conspicuously in writing and in not less than ten-point standard
14 type. All disclosures required by this chapter shall be printed
15 or typed in a color or shade that clearly contrasts with the
16 background. The disclosures required under section -4 shall
17 be made on the face of the lease-purchase agreement above the
18 line for the tenant's signature.

19 (c) If a disclosure becomes inaccurate as the result of
20 any act, occurrence, or agreement by the tenant after delivery
21 of the required disclosures, the resulting inaccuracy shall not
22 be a violation of this chapter.



1 § -4 Information required in disclosure. (a) A
2 landlord shall disclose the following items, as applicable, in
3 every lease-purchase agreement:

4 (1) A description of the property sufficient to identify
5 it;

6 (2) The date of the transaction and the identities of the
7 landlord and tenant;

8 (3) The total number, total amount, and timing of all
9 payments necessary to acquire ownership of the
10 property;

11 (4) A statement that the tenant shall not own the property
12 until the tenant has made the total payment necessary
13 to acquire ownership;

14 (5) A statement identifying the party responsible for
15 maintaining the fitness of the property pursuant to
16 section 521-42 while it is being rented, together with
17 a description of that responsibility; and

18 (6) A statement of any mortgages, liens, or encumbrances
19 on the property.

20 (b) In addition to the disclosures required pursuant to
21 this section, the landlord shall also make the following
22 disclosure:



"NOTICE TO TENANT--READ BEFORE SIGNING

- (1) DO NOT SIGN THIS BEFORE YOU READ THE ENTIRE AGREEMENT INCLUDING ANY WRITING ON THE REVERSE SIDE, EVEN IF OTHERWISE ADVISED.
- (2) DO NOT SIGN THIS IF IT CONTAINS ANY BLANK SPACES.
- (3) THE ORIGINAL SIGNED AGREEMENT MUST BE RECORDED WITH THE BUREAU OF CONVEYANCES. YOU ARE ENTITLED TO A COPY OF THE RECORDED AGREEMENT."

§ -5 **Advertisements.** If an advertisement for a lease-purchase agreement refers to or states the dollar amount of any payment and the right to acquire ownership of real property, the advertisement shall also clearly and conspicuously state the following items, as applicable:

- (1) That the transaction advertised is a lease-purchase agreement;
- (2) The total of payments necessary to acquire ownership; and
- (3) That the tenant acquires no ownership rights if the total amount necessary to acquire ownership is not paid.



1 Any owner or personnel of any medium in which an
2 advertisement appears or through which it is disseminated is not
3 liable under this section.

4 § -6 Remedies of tenant. (a) In case of a violation by
5 a landlord of any provision of this chapter, the tenant may
6 bring a suit in any court of competent jurisdiction to recover
7 actual damages from the landlord, or may set off or counterclaim
8 in any action by the landlord.

9 (b) The remedies specified in subsection (a) shall be in
10 addition to any other remedies provided by law.

11 (c) In any action brought pursuant to this section, the
12 court shall award the prevailing party the costs of the action
13 and reasonable attorneys' fees.

14 § -7 Unfair or deceptive acts or practices.

15 Notwithstanding section -6, any person who violates this
16 chapter shall be deemed to have engaged in an unfair or
17 deceptive act or practice within the meaning of section 480-2.

18 § -8 Unconscionability. (a) With respect to a lease-
19 purchase transaction, if the court as a matter of law finds the
20 transaction, agreement, or any clause of the agreement to have
21 been unconscionable at the time it was made, the court may:

22 (1) Refuse to enforce the agreement;



1 (2) Enforce the remainder of the agreement without the
2 unconscionable clause; or

3 (3) Limit the application of any unconscionable clause to
4 avoid any unconscionable result.

5 (b) If it is claimed or appears to the court that the
6 transaction, agreement, or clause may be unconscionable, the
7 parties shall be afforded a reasonable opportunity to present
8 evidence as to its setting, purpose, and effect to aid the court
9 in making a determination related to unconscionability.

10 (c) The remedies of this section shall be in addition to
11 remedies otherwise available for the same conduct authorized
12 under law other than in this chapter."

13 SECTION 2. This Act does not affect rights and duties that
14 matured, penalties that were incurred, and proceedings that were
15 begun before its effective date.

16 SECTION 3. This Act shall take effect upon its approval.

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INTRODUCED BY:

James L. White



S.B. NO. 600

Report Title:

Trade Regulation and Practice; Real Property; Lease-Purchase Agreements

Description:

Establishes certain requirements pertaining to lease-purchase agreements for real property. Establishes causes of action for violations.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

