

**"CHAPTER 516
RESIDENTIAL LEASEHOLDS**

Part I. General Provisions

Section

- 516-1 Definitions
- 516-2 Applicability
- 516-3 No estoppel or waiver
- 516-4 Trusts and estates
- 516-5 Penalty
- 516-6 Administration of chapter
- 516-7 Corporation's duties, generally
- 516-8 Interested members, officers, or employees
- 516-9 Quitclaim deeds

Part II. Condemnation of Development Tract

- 516-21 Applicability
- 516-22 Designation of leased fee interest in all or part of development tract for acquisition
- 516-23 Exercise of power of eminent domain
- 516-24 Compensation
- 516-24.5 Exchanges
- 516-25 Interest acquired
- 516-26 Interest in compensation paid by the corporation
- 516-27 Compulsory or involuntary conversion
- 516-28 Disposition, generally
- 516-29 Notice of disposition
- 516-30 Purchase of leased fee interest
- 516-31 Disposition by lease
- 516-32 Not for profit
- 516-33 Qualification for purchase
- 516-33.5 Deposits by lessees
- 516-34 Mortgages, agreements of sale, other instruments
- 516-35 Restrictions on sale and use of residential lots
- 516-35.1 Foreclosure and sale by mortgagees
- 516-36 to 39 Repealed
- 516-40 Bonds as legal investments
- 516-41 Exemption from taxation and assessments
- 516-42 Investment of reserves
- 516-43 Security for funds deposited
- 516-44 Repealed
- 516-45 General obligation bonds
- 516-51 Preliminary negotiation required
- 516-52 to 55 Repealed
- 516-56 Eminent domain trial

Part III. Rights of Lessees

- 516-61 Applicability
- 516-62 Discrimination
- 516-63 Free assignability
- 516-64 Forfeiture
- 516-65 Extension
- 516-66 Lease rental
- 516-67 Zoning changes
- 516-68 Rights to self-organization; remedies
- 516-69 Sale of fee by lessor
- 516-70 Reversion of improvements
- 516-71 Residential lease; disclosure
- 516-72 Civil penalty
- 516-73 Suggested form of standardized summary of lease provisions

Part IV. Judicial Declaration

- 516-81 Repealed
- 516-82 Severability
- 516-83 Legislative findings and declaration of necessity; purpose

Part V. Fee Title Acquisition Loan Program

- 516-91 Definitions
- 516-95 Rules; eligible loans
- 516-101 Revenue bonds; authorization
- 516-102 Revenue bonds; payment and security
- 516-103 Revenue bonds; interest rate, price, and sale
- 516-104 Revenue bonds; investment of proceeds and redemption
- 516-107 Trustee; designation, duties
- 516-108 Trust indenture
- 516-111 Revenue bonds; special funds
- 516-121 Acquisition loan programs; procedures and requirements
- 516-122 Acquisition loan programs; general powers
- 516-123 Acquisition loan programs; self supporting
- 516-124 Acquisition loan programs; fees
- 516-125 Acquisition loan programs; evidence of eligible loan
- 516-131 Loans to lenders program
- 516-132 Loan to lenders program; collateral security
- 516-141 Purchase of existing loans program
- 516-151 Advance commitments program
- 516-161 Eligible loan funding program
- 516-171 Loans; service and custody
- 516-172 Loans; sale, pledge, or assignment
- 516-173 Loans; insurance and guarantees
- 516-174 Loans; default
- 516-181 Interest acquired
- 516-182 Restrictions on sale and use of residential lots

acquired from proceeds of eligible loan
516-186 Construction

Part VI. Sustainable Affordable Developments
or Leases

516-201 Exemption for sustainable affordable developments
516-202 Certification
516-203 Recordkeeping
516-204 University of Hawaii at Manoa

Law Journals and Reviews

Extending Land Reform to Leasehold Condominiums in Hawai'i. 14 UH L. Rev. 681.

The Constitutionality of a Naked Transfer: Mandatory Lease-to-Fee Conversion's Failure To Satisfy a Requisite Public Purpose in Hawai'i Condominiums. 25 UH L. Rev. 561.

The Moon Court, Land Use, and Property: A Survey of Hawai'i Case Law 1993-2010. 33 UH L. Rev. 635 (2011).

Case Notes

Chapter did not preempt ordinance relating to residential condominium leasehold conversion. 76 H. 46, 868 P.2d 1193.

Chapter only authorizes housing finance and development corporation to institute single condemnation proceeding of a specifically designated portion of a development tract and does not allow that proceeding to be judicially divided into multiple condemnations of individual lots. 82 H. 172, 921 P.2d 92.

Constitutionality.

Chapter did not violate "public use" requirement of Fifth Amendment to U.S. Constitution. 467 U.S. 229.

Hawaii Land Reform Act violates public use limitation of Fifth and Fourteenth Amendments of U.S. Constitution. 702 F.2d 788.

Given system of landholding in Hawaii, legislature could, under police power, conclude that general welfare was served by condemning land of large landholder-lessors and allow lessees to purchase land from State. 483 F. Supp. 63.

Legislature's determinations of what land is subject to condemnation and who is entitled to repurchase from State are not arbitrary or capricious. 483 F. Supp. 63.

Condemnation of leased fee interests in residential houselots continued to satisfy "public use" prerequisite of Fifth Amendment to U.S. Constitution and article I, §20 of Hawai'i constitution. 79 H. 64, 898 P.2d 576.

"PART I. GENERAL PROVISIONS

§516-1 Definitions. Unless otherwise clear from the context, as used in this chapter:

"Corporation" means the Hawaii housing finance and development corporation created by chapter 201H.

"Development tract" means a single contiguous area of real property not less than five acres in size which has been developed and subdivided into residential lots, including residential lots which may have been converted to fee simple and

streets and roadways developed as an integral part of the development tract. Two or more pieces of real property shall be considered as a single contiguous area if they would be contiguous except for the interposition or existence of a road, street, stream, fee lot, or other like interference.

"Fair market value" means that amount of money that a purchaser willing, but not obliged, to buy an interest in land would pay an owner willing, but not obliged, to sell it, taking into consideration all uses to which the land is adapted or might in reason be applied.

"Fee simple lands" means absolute ownership of land for an indefinite duration, freely transferable and inheritable. For the purposes of this chapter, a lessee shall be deemed to own fee simple lands if such fee simple real property is held under any trust agreement or fiduciary arrangement in which another person holds legal title to the land and where the lessee, whether as trustee, co-trustee or beneficiary, holds or retains the controlling interest and right to direct the trust with regard to management or control of the trust or its assets.

"Fee simple owner" and "fee owner" mean the person who owns the fee simple title to the land which is leased, 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.

"Lease" means a conveyance of land or an interest in land, by a fee simple owner as lessor, or by a lessee or sublessee as sublessor, to any person, in consideration of a return of rent or other recompense, for a term, measured from the initial date of the conveyance, twenty years or more (including any periods for which the lease may be extended or renewed at the option of the lessee).

"Leased fee" and "leased fee interest" means all of the interests of the fee owner, lessor, and all legal and equitable owners of the land which is leased, other than the lessee's interest as defined by this chapter.

"Legal and equitable owners" means the fee simple owner and all persons having legal or equitable interests in the fee or in the lessor's leasehold estate, including mortgagees, developers, lienors, and sublessors, and their respective heirs, successors, legal representatives, and assigns.

"Lessee" means any person to whom land is leased or subleased, and the lessee's heirs, successors, legal representatives, and assigns.

"Lessor" means any person who leases or subleases land to another, and the lessor's heirs, successors, legal representatives, and assigns.

The terms "lessor", "lessee", "fee simple owner", "fee owner", and "legal and equitable owners" include individuals, both masculine and feminine, and, except as to the term "lessee", the terms also include corporations, firms, associations, trusts, estates, and the State or its political subdivisions. When more than one person are the lessors, lessees, fee simple owners, fee owners, or legal and equitable owners of a lot, the terms apply to each of them, jointly and severally.

"Lot", "housetot", "residential lot", and "residential housetot" mean a parcel of land, two acres or less in size, zoned for residential use, which is used or occupied or is developed, devoted, intended, or permitted to be used or occupied as a principal place of residence for one or two families.

"Offsite improvements" means all physical improvements such as, but not limited to, roads, sewer lines, sewage treatment plants, gutters, curbs, sidewalks, fire hydrants, street lights, land dedicated for public purposes and underground electric cables, constructed or placed in a subdivision off the lots intended for occupancy, which improvements are to be used in common by occupants of all lots adjoining such improvements or by the occupants of all lots for whose benefit the improvements have been constructed or placed.

"Onsite improvements" means all physical improvements placed on a residential lot intended for occupancy which improvements are for the benefits of occupants of that lot, including, but not limited to, dwelling units, garages, service buildings, stairs, walkways, driveways, walls, trees, shrubs, landscaping, and pools.

"Owner's basis" means the value of the lessor's leased fee interest in the lot that would apply if such interests were normally traded on an open market. The fair market value of the owner's basis shall be established to provide the lessor with just compensation for the lessor's interests in the lot and shall take into consideration every interest and equity of the lessee in establishing that market value. The value may be determined by either of the following methods, or any other method which is normally used by qualified appraisers in establishing the fair market value of a lessor's leased fee interest in land:

- (1) The sum of: (i) the future rental income stream for the lot for the term of the lease discounted to present worth from the expiration date of the lease; and (ii) the value of the lessor's reversionary interest in the lot discounted to present worth from the expiration date of the lease. The discount rate

shall be based on the maximum rate of return for insured passbook demand saving account paid by the savings and loan institutions in Hawaii plus three and three-fourths per cent; provided, however, that the discount rate may be modified by mutual agreement of the lessor, lessee, and the corporation; or

(2) The current fair market value of the lot, valued as if it were a fee simple lot and as if the fee title were unencumbered, and excluding onsite improvements, established by a market data approach utilizing comparable sales, less the following:

- (A) The value of the lease, including any rights therein, if any, which accrues to the lessee;
- (B) That percentage of the general enhancement of the neighborhood which has been paid for or contributed directly or indirectly by the lessee;
- (C) The current replacement cost of that portion of existing offsite improvements, including overhead and profit at prevailing rates, which were paid for or otherwise contributed, directly or indirectly, by the lessee;
- (D) That percentage of the general enhancement of the development tract and the lot caused by the onsite improvements on the lot paid for, or contributed, directly or indirectly, by the lessee;
- (E) That amount, not otherwise deducted herein, allocated to the lot, which was paid for or otherwise contributed, directly or indirectly by the original lessee, computed at prevailing rates for overhead and profit in developing the development tract established by existing practice in the community; and
- (F) That amount for fees and costs which would ordinarily be borne by lessor in transferring such interest to lessee, including, but not limited to, attorneys' or realtors' commissions, other costs of sale, and similar fee;

provided, however, that the values established by any one of the foregoing shall not be duplicated in any one of the other provisions.

"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. [L 1967, c 307, §2; HRS §516-1; am L 1968, c 46, §2a to d; am L 1975, c 184, §2(1); am L 1976, c 242, §1; am L 1978, c 140, §1; am L 1979, c 227, §1; am L 1980, c 39, §2 and c 107, §2; gen ch 1985; am L 1986, c 165, §1; am L 1988, c 104, §1; am L 1992, c 158, §1; am L 1997, c 350, §§14, 15; am L 2003, c 29, §1; am L 2005, c 196, §26(b) and c 197, §3; am L 2006, c 180, §16; am L 2007, c 249, §27]

Attorney General Opinions

Computation of area of development tract; "residential lot", what constitutes. Att. Gen. Op. 85-16.

Law Journals and Reviews

Hawaii's Land Reform Act: Is it Constitutional? 6 HBJ 31.
For discussion of an approach to concentration of land ownership, see The Antitrust Laws and Land: An Answer to Hawaii's Housing Crisis? 8 HBJ 5.

Case Notes

Portions of definition of "owner's basis" are invalid but are severable. 471 F. Supp. 871.

An "open market", as referred to in the definition of "owner's basis", means "an unrestricted competitive market in which any buyer and seller is free to participate". 79 H. 321 (App.), 901 P.2d 1300.

" **§516-2 Applicability.** This chapter applies to all lands leased as residential lots which are owned or held privately or owned by the State or its political subdivisions, except Hawaiian home lands which are subject to Article XII of the Constitution of the State and lands owned or held by the federal government. This chapter is not meant to supersede or preclude any other remedy at law available to residential leasehold lessees or the State, including those available under chapter 480. [L 1967, c 307, §3; HRS §516-2; am L 1969, c 203, §1; am L 1975, c 184, §2(2)]

" **§516-3 No estoppel or waiver.** The rights granted to lessees by this chapter shall be effective, notwithstanding any provision in any lease or contract to the contrary. No lessee shall be estopped by any covenant, term, condition, or contract, however worded, from claiming the rights granted to the lessee or otherwise be deemed to have waived such right. Any provision in any lease or contract contrary to the intent or purpose of this chapter is void. [L 1967, c 307, §4; HRS §516-3; gen ch 1985]

Law Journals and Reviews

Hawaii's Land Reform Act: Is it Constitutional? 6 HBJ 31.

" **§516-4 Trusts and estates.** The rights granted to lessees by this chapter shall be effective, notwithstanding any condition or provision to the contrary in any instrument creating any life tenancy, defeasible fee, estate, or trust, regardless of whether such tenancy, fee, estate or trust was in effect prior to June 24, 1967 or is created hereafter; and the life tenant, holder, officer, or trustee of any such tenancy, defeasible fee, estate, or trust may convey residential leases for terms exceeding twenty years and shall perform all acts required of the life tenant, holder, officer, or trustee by this chapter. Every such instrument now in existence or hereafter executed shall be construed in conformity with the intent and purpose of this chapter. No trustee, officer, or agent of a lessor or other legal or equitable owner shall, while acting pursuant to this chapter, be deemed to be acting in bad faith or to have committed a breach of trust. [L 1967, c 307, §5; HRS §516-4; am L 1975, c 184, §2(3); gen ch 1985]

Law Journals and Reviews

Hawaii's Land Reform Act: Is it Constitutional? 6 HBJ 31.

" **§516-5 Penalty.** Any person who violates this chapter shall be fined not more than \$5,000 nor less than \$1,000 or imprisoned not more than one year, or both. [L 1967, c 307, §6; HRS §516-5; am L 2015, c 237, §37]

" **§516-6 Administration of chapter.** The Hawaii housing finance and development corporation shall administer this chapter. [L 1967, c 307, §7; HRS §516-6; am L 1987, c 337, §16; am L 1988, c 104, §2; am L 1997, c 350, §14; am L 2005, c 196, §26(b); am L 2006, c 180, §16]

" **§516-7 Corporation's duties, generally.** In addition to any other duty prescribed by law and in this chapter, the Hawaii housing finance and development corporation shall:

- (1) Within six months after June 24, 1967, adopt and promulgate, in accordance with chapter 91, all rules and regulations necessary to effectuate the purposes of this chapter;
- (2) Enforce this chapter and the rules and regulations adopted pursuant thereto;
- (3) Subject to chapter 76, appoint and remove such administrative, technical, and clerical staff as it may require and prescribe their powers and duties; except that the corporation may appoint, without regard to chapter 76, one or more appraisers on a

- part-time, contractual basis for the purposes set forth in this chapter;
- (4) Establish such reasonable fees to be assessed and collected from lessees for the services of any appraiser;
 - (5) Disseminate information and render assistance to lessees of residential lots in order that this chapter may be understood and effectively implemented;
 - (6) Conduct an investigation upon any written complaint or whenever it appears to the corporation that this chapter has been or is being violated. In such investigation, the corporation may examine the books, accounts, records, and files of any person connected with the matter under investigation and conduct hearings. If the corporation finds from satisfactory evidence that any person has violated or is violating this chapter, it may order such person to cease and desist from continuing the violation or engaging therein or doing any act or acts in furtherance thereof and, where necessary, it may bring an action in the name of the State in any court of competent jurisdiction for enforcement of its orders;
 - (7) Acquire by eminent domain proceedings, all necessary property interests as provided in this chapter;
 - (8) Make and execute contracts, mortgages, and other instruments necessary or convenient to the exercise of the powers of the corporation;
 - (9) From time to time, require from the lessors of leases of residential lots and from all fee owners and legal and equitable owners of lots subject to such leases, such information as it may reasonably require in connection with the administration of this chapter;
 - (10) Do all things necessary and convenient to carry out the powers expressly conferred upon it by this chapter. [L 1967, c 307, §8; HRS §516-7; am L 1975, c 184, §2(4); am L 1987, c 337, §16; am L 1988, c 104, §2; am L 1997, c 350, §14; am L 2000, c 253, §150; am L 2005, c 196, §26(b); am L 2006, c 180, §16]

" **§516-8 Interested members, officers, or employees.** No member of the Hawaii housing finance and development corporation or officer or employee administering this chapter shall acquire any interest, direct or indirect, in the ownership or development of any development tract other than by gift, devise, or inheritance, nor shall the member, officer, or employee have or acquire any interest, direct or indirect, in the financing or in any contract or proposed contract for services to be

furnished or used in connection with or relating to the development of any development tract. If any such member, officer, or employee has or acquires an interest by gift, devise, or inheritance, direct or indirect, in any development tract or is a lessee of any residential lot affected by the eminent domain proceedings instituted under this chapter, the member, officer, or employee shall immediately disclose the same in writing to the corporation and such disclosure shall be entered upon the minutes of the corporation. The member, officer, or employee shall not participate in any action by the corporation relating to the property, tract, or contract in which the member, officer, or employee has or acquires any such interest. Violation of this section constitutes misconduct in office and is cause for dismissal. [L 1967, c 307, §9; HRS §516-8; gen ch 1985; am L 1987, c 337, §16; am L 1988, c 104, §2; am L 1997, c 350, §14; am L 2005, c 196, §26(b); am L 2006, c 180, §16]

" **§516-9 Quitclaim deeds.** Unless otherwise provided by law, the corporation shall issue quitclaim deeds and leases whenever it conveys, transfers, sells, or assigns any property developed, constructed, or sponsored under this chapter. In no instance shall the corporation be considered a guarantor or warrantor of the condition and quality of the property upon the issuance of any such quitclaim deed or lease. [L 1984, c 162, §4; am L 1987, c 337, §16; am L 1988, c 104, §2; am L 1991, c 82, §1; am L 2005, c 196, §26(b); am L 2006, c 180, §16]

"PART II. CONDEMNATION OF DEVELOPMENT TRACT

§516-21 Applicability. This part applies to development tracts which are, at the time of acquisition of leased fee interests in residential lots within such tracts by the Hawaii housing finance and development corporation as [provided] herein:

- (1) Developed and subdivided into residential houselots occupied by lessees under leases executed before June 24, 1967;
- (2) Developed and subdivided or partially developed into residential houselots occupied or to be occupied by lessees under leases executed after June 24, 1967, provided that ten or more years remain before the final termination of the lease term, and provided further that ninety per cent of the leases to the lots have been executed. [L 1967, c 307, §10; HRS §516-21; am L 1975, c 184, §2(5); am L 1987, c 337, §16; am L

1988, c 104, §2; am L 1997, c 350, §14; am L 2005, c 196, §26(b); am L 2006, c 180, §16]

Law Journals and Reviews

For discussion of an approach to concentration of land ownership, see *The Antitrust Laws and Land: An Answer to Hawaii's Housing Crisis?* 8 HBJ 5.

" **§516-22 Designation of leased fee interest in all or part of development tract for acquisition.** The corporation may designate all or a portion of a development tract for acquisition and acquire leased fee interests in residential houselots in a development tract, through the exercise of the power of eminent domain or by purchase under the threat of eminent domain after twenty-five or more lessees or the lessees of more than fifty per cent of the residential lease lots within the development tract, whichever number is the lesser, have applied to the corporation to purchase the leased fee interest in their residential leasehold lots pursuant to section 516-33 and if, after due public notice and public hearing, the time and place of which have been duly given in the county in which the development tract is situated on at least three different days, the last notice being not less than five days before the date of hearing, the corporation finds that the acquisition of the leased fee interest in residential houselots in all or part of the tract through exercise of the power of eminent domain or by purchase under threat of eminent domain and the disposition thereof, as provided in this part will effectuate the public purposes of this chapter. [L 1967, c 307, §11; HRS §516-22; am L 1975, c 184, §2(6); am L 1976, c 242, §2; am L 1987, c 337, §16; am L 1988, c 104, §2; am L 1998, c 2, §104; am L 2005, c 196, §26(b); am L 2006, c 180, §16]

Law Journals and Reviews

The Constitutionality of a Naked Transfer: Mandatory Lease-to-Fee Conversion's Failure To Satisfy a Requisite Public Purpose in Hawai'i Condominiums. 25 UH L. Rev. 561.

Case Notes

State may use power of eminent domain to redefine, rearrange, or redistribute interests in land. 471 F. Supp. 871.

Taking is for a public use. 68 H. 55, 704 P.2d 888.

Statutory public hearing requirement serves only informational purpose. 72 H. 466, 822 P.2d 955.

Pursuant to this section, the housing finance and development corporation's sole function is to determine that necessary quantum of lessees have applied for purchase of their leased fee interests in residential lots situated in a qualifying "development tract", in conformity with preconditions enumerated in §516-33, and that the acquisition by the housing finance and development corporation will effectuate public purposes of the Hawai'i Land Reform Act. 79 H. 64, 898 P.2d 576.

Section 516-23 requires the housing finance and development corporation to acquire and dispose of the leased fee interests in no less than that portion of the development tract represented by the statutory minimum number of applicants designated pursuant to this section. 82 H. 172, 921 P.2d 92.

" **§516-23 Exercise of power of eminent domain.** Within twelve months after the designation of all or part of the development tract for acquisition, the Hawaii housing finance and development corporation shall acquire through voluntary action of the parties, or institute eminent domain proceedings to acquire the leased fee interest in the tract or portion so designated; provided that negotiations for acquisition by voluntary transaction shall not be required before the institution of eminent domain proceedings. Except as otherwise provided in this part, the corporation shall exercise its power of eminent domain in the same manner as provided in chapter 101. If the development tract or applicable portion thereof, as the case may be, is not acquired or eminent domain proceedings are not instituted within the twelve-month period, the corporation shall reimburse the fee owner, the lessor, and the legal and equitable owners of the land so designated for actual out-of-pocket expenses of appraisal, survey, and attorney fees as the owner, the lessor, and the legal and equitable owners may have incurred as a result of the designation; provided that, if the development tract or an applicable portion thereof is not acquired or eminent domain proceedings are not instituted within the twelve-month period as a result of the lessee's dismissal, discontinuance, or withdrawal from the eminent domain proceedings or failure to purchase the leased fee interest condemned because of the lessee's inability, failure, or refusal to comply with any provision under chapter 516 or to purchase the leased fee interest condemned, then such lessee and not the corporation shall be solely responsible to reimburse the fee owner, the lessor, and the legal and equitable owners of the land so designated or condemned, for their respective prorated costs, as described above, which the fee owner, the lessor, and the legal and equitable owners may have incurred as a result of the designation and condemnation. [L 1967, c 307, §12; HRS §516-

23; am L 1975, c 184, §2(7); am L 1987, c 337, §16; am L 1988, c 104, §2; am L 1997, c 350, §14; am L 2001, c 38, §2; am L 2005, c 196, §26(b); am L 2006, c 180, §16]

Law Journals and Reviews

Hawaii's Land Reform Act: Is it Constitutional? 6 HBJ 31.

Case Notes

Section requires the housing finance and development corporation to acquire and dispose of the leased fee interests in no less than that portion of the development tract represented by the statutory minimum number of applicants designated pursuant to §516-22. 82 H. 172, 921 P.2d 92.

" **§516-24 Compensation.** The compensation to be paid for the leased fee interest in a residential houselot within a tract shall be the owner's basis as defined in section 516-1. The compensation shall be determined as of the date of the summons of the complaint in eminent domain. [L 1967, c 307, §13; HRS §516-24; am L 1968, c 46, §2e; am L 1975, c 184, §2(8); am L 1983, c 204, §2]

Revision Note

Section "516-1" substituted for "516-1(14)".

Case Notes

Chapter does not deprive landowners of just compensation. 68 H. 55, 704 P.2d 888.

Procedure for determining blight of summons damages in leasehold conversion cases. 69 H. 247, 739 P.2d 248.

Calculation of blight of summons damages as part of just compensation under leasehold condemnation. 72 H. 383, 819 P.2d 82.

" **§516-24.5 Exchanges.** (a) The corporation may exchange public lands for private lands to be condemned or involuntarily sold pursuant to this chapter; provided that any such exchange shall be subject to legislative disapproval; provided further that lands exchanged need not be of like-kind or comparable use; and provided further that no lands classified as conservation shall be exchanged for private lands.

(b) The corporation may acquire private lands by negotiated sale for purposes of exchanging such land with

private lands pursuant to subsection (a). The legislature declares that such acquisition is for the public purpose of encouraging home ownership on as widespread a basis as possible. [L 1975, c 184, §2(21); am L 1987, c 337, §16; am L 1988, c 104, §2; am L 2005, c 196, §26(b); am L 2006, c 180, §16]

" **§516-25 Interest acquired.** (a) Upon acquisition of the leased fee interest in residential houselots within all or a portion of a development tract as provided in this part, the property interest acquired by the Hawaii housing finance and development corporation is all of the right, title, and interest of the fee owner, and of the lessor and all legal and equitable owners, if any, in and to the residential houselots acquired; subject to existing leases of residential houselots within the development tract, and to all covenants, conditions, easements, reservations, and restrictions of record running with the land or contained in the agreement of sale, deed, or other conveyance held by the fee owner, lessor, and legal and equitable owners or permitted or suffered by lessees of existing residential houselot leases, which are not inconsistent with the intent of this part. The acquisition terminates all the right, title, and interest of the fee owner, lessor, and all legal and equitable owners, whether the interest be a remainder, vested or contingent, a reversion, or other beneficial interest in the property, present or prospective.

(b) If the leasehold is subject to any mortgage, lien, or encumbrance suffered or permitted by the lessee, including, but not limited to, rights arising through divorce, marriage, or assignment, the purchase of the leased fee by the lessee shall in no manner affect or impair the mortgage, lien, or encumbrance or the security afforded thereby to the holder thereof, and the leasehold shall continue, notwithstanding the purchase of the leased fee by the lessee, for the purpose and to extent necessary to avoid any impairment of such leasehold security, unless the holder of the leasehold mortgage, lien, or encumbrance shall in writing consent to the transfer thereof to the fee as herein provided. Upon the written consent by the holder thereof, each such mortgage, lien, or encumbrance to which the leasehold is subject and to which such consent refers shall be transferred to and shall bind the fee acquired by the lessee, and shall thereafter continue in full force and effect as a mortgage, lien, or encumbrance of the fee acquired by the lessee, in the same order and priority among such mortgages, liens, and encumbrances so transferred to the fee as the same applied to and bound the lessee's immediate, previous leasehold interest. [L 1967, c 307, §14; HRS §516-25; am L 1975, c 184,

§2(9); am L 1987, c 337, §16; am L 1988, c 104, §2; am L 1997, c 350, §14; am L 2005, c 196, §26(b); am L 2006, c 180, §16]

" **§516-26 Interest in compensation paid by the corporation.** The fee owner, lessor, and all legal and equitable owners shall share in the compensation paid by the Hawaii housing finance and development corporation as their respective interests appear. Notwithstanding any contrary provision in any contract or lease, a developer or other person entitled to share in the lease rentals shall share in such compensation paid by the corporation to the extent of the developer's or other person's interest as may be determined by agreement of those entitled to share in the compensation paid by the corporation, or in the absence of such agreement, pursuant to chapter 658A. [L 1967, c 307, §15; HRS §516-26; am L 1975, c 184, §2(10); gen ch 1985; am L 1987, c 337, §16; am L 1988, c 104, §2; am L 1997, c 350, §14; am L 2001, c 265, §4; am L 2005, c 196, §26(b); am L 2006, c 180, §16]

" **§516-27 Compulsory or involuntary conversion.** It is the intent of the legislature, within the meaning of section 1033 or section 1231 of the Internal Revenue Code or the applicable provisions of chapter 235, Hawaii Revised Statutes, as well as all other statutes, rules, regulations, administrative orders, and legal interpretations within the federal and state governments relating to taxation, that any conveyance of title to property by a fee owner to the corporation under this part shall constitute a compulsory or involuntary conversion (as a result of the exercise of the power of condemnation or the threat of imminence thereof), and that such fee owner shall not be deemed, by reason, in whole or in part, of any provision of this part or by reason of the execution by the fee owner of leases to the property and other properties subsequent to June 24, 1967, to hold the property primarily for sale to customers in the ordinary course of trade or business. [L 1967, c 307, §16; HRS §516-27; am L 1987, c 337, §16; am L 1988, c 104, §2; am L 2005, c 196, §26(b); am L 2006, c 180, §16]

" **§516-28 Disposition, generally.** It shall be the policy of the Hawaii housing finance and development corporation to encourage the widespread fee simple ownership of residential lots situated within a development tract. Where necessary or desirable, the corporation may lease the residential lots. Not more than one lot shall be sold in fee simple or leased to a purchaser or lessee. A husband and wife together, unless separated and living apart under a decree of separation issued by a court of competent jurisdiction, shall be entitled to only

one lot. [L 1967, c 307, §17; HRS §516-28; am L 1975, c 184, §2(11); am L 1987, c 337, §16; am L 1988, c 104, §2; am L 1997, c 350, §14; am L 2005, c 196, §26(b); am L 2006, c 38, §27 and c 180, §16]

" **§516-29 Notice of disposition.** Except in case of a sale of the leased fee interest to the lessee of a residential lot under lease, no sale or lease of any residential lots shall be made by the Hawaii housing finance and development corporation unless it has given public notice on at least two different days in the county of its intent to sell or lease. The notice shall state, in general terms, the size, location, and prices or lease rentals of the lots to be sold or leased, the terms of the sale or lease, and the last date on which applications will be received by the corporation, which date shall not be less than thirty days after the first notice. The notice shall also state the times and places at which more detailed information with respect to the sale or lease may be secured by interested persons. [L 1967, c 307, §18; HRS §516-29; am L 1968, c 46, §2f; am L 1987, c 337, §16; am L 1988, c 104, §2; am L 1997, c 350, §14; am L 1998, c 2, §105; am L 2005, c 196, §26(b); am L 2006, c 180, §16]

" **§516-30 Purchase of leased fee interest.** The lessee of a residential lot within a development tract, whether the lessee was a lessee at the time of the acquisition or became a lessee after the acquisition of the development tract, who has applied to the corporation and has qualified for purchase of the leased fee interest shall purchase from the Hawaii housing finance and development corporation by contract within sixty days of acquisition of the interest by the corporation, the leased fee interest to the lot, subject to the terms, covenants, and conditions of the contract executed with the corporation; provided that the lessee is not then in default in the performance of the lessee's obligations under the lease; and further provided that should any of the lessees fail or refuse to enter into such a contract, then in such event, each such lessee shall pay to the corporation the lessee's pro rata share of all direct costs incurred by the corporation in the acquisition of the houselots within the development tract including but not limited to appraisal costs, costs of publication, and survey, and the corporation is authorized to take whatever action it deems necessary to collect such costs; and provided further that in case of a wilful breach of the purchase agreement the corporation shall be entitled to any available remedy, including the sale of its interest in the houselot; and further provided that the sales price shall be at the lowest possible price consistent with section 516-32 and the

purpose of this chapter. [L 1967, c 307, §19; HRS §516-30; am L 1975, c 184, §2(12); gen ch 1985; am L 1987, c 337, §16; am L 1988, c 104, §2; am L 1997, c 350, §14; am L 2001, c 60, §2; am L 2005, c 196, §26(b); am L 2006, c 180, §16]

Case Notes

State may use power of eminent domain to redefine, rearrange, or redistribute interests in land. 471 F. Supp. 871.

" **§516-31 Disposition by lease.** The Hawaii housing finance and development corporation may lease any of the residential lots in a development tract at lease rentals and upon terms and conditions as it may determine. The leases shall be subject to all of the rights of lessees enumerated in part III. The corporation, in its discretion, may utilize any of the residential lots and rent out the same for periods of twenty years or less for the purposes set forth in chapter 201H, or for any other purpose, all upon terms and conditions as the corporation may determine. [L 1967, c 307, §20; HRS §516-31; am L 1987, c 337, §16; am L 1988, c 104, §2; am L 1997, c 350, §14; am L 1998, c 11, §26 and c 212, §46; am L 2005, c 196, §26(b); am L 2006, c 180, §16; am L 2007, c 249, §28]

" **§516-32 Not for profit.** It is declared to be the policy of the State that the Hawaii housing finance and development corporation shall carry out its responsibilities under this part in an efficient manner so as to enable it to fix the sales prices and rentals for residential lots at the lowest possible rates consistent with the purpose of this part; and that the corporation shall not administer this part for profit, or as a source of revenue to the State. To this end, the corporation shall fix the sales prices for residential lots or rentals for lots at no higher rates or prices than it shall find to be necessary in order to produce revenues which (together with all other available moneys, revenues, income, and receipts of the corporation from whatever sources derived under the administration of this part) will be sufficient: (1) to pay, as the same becomes due, the principal and interest on the bonds of the corporation; (2) to meet the cost of, and to provide for the administration of this part; and (3) to create a reserve sufficient to meet the largest principal and interest payments which will be due on such bonds in any one year thereafter and to maintain such reserve. [L 1967, c 307, §21; HRS §516-32; am L 1987, c 337, §16; am L 1988, c 104, §2; am L 1997, c 350, §14; am L 2005, c 196, §26(b); am L 2006, c 180, §16]

" **§516-33 Qualification for purchase.** (a) Except as otherwise provided under section 516-28, no application to purchase shall be accepted nor shall any sale of any residential houselot within a development tract be made to any person unless the person meets the following requirements:

- (1) Is at least eighteen years of age;
- (2) Is a bona fide resident of the State and resides on the lot, except in hardship circumstances as determined by the corporation on a case by case basis where such inability to reside on the lot arises out of a temporary job or military transfer, a temporary educational sabbatical or the serious illness of the person; provided further that if either the person or the lessor disagree with the corporation's determination, they shall be entitled to a contested case proceeding under chapter 91 in which both the person and lessor shall be parties;
- (3) Has legal title to, or pursuant to an agreement of sale an equitable interest in, a residential structure situated on the leased lot applied for; provided that for the purposes of this section, the vendor under such agreement of sale shall not be eligible to purchase the lot. An agreement of sale means an executory contract for the sale and purchase of real property which binds one party to sell and the other party to buy property which is the subject matter of the transaction;
- (4) Has a letter of credit, certificate of deposit, proof of funds, or approved application from any lending institution demonstrating that the person will be able to promptly pay the corporation for the leased fee interest in the lot;
- (5) Submits an application in good faith in such form as is acceptable to the corporation;
- (6) Executes a contract for purchase of the fee interest in such form as is acceptable to the administration; and
- (7) Does not own in fee simple lands suitable for residential purposes for such person within the county and in or reasonably near the place of business of such person or has or have pending before the Hawaii housing finance and development corporation an unrefused application to lease or purchase a lot in a development tract. A person is deemed to own lands herein if the person, the person's spouse, or both the person and the person's spouse (unless separated and

living apart under a decree of a court of competent jurisdiction) own lands.

(b) The amount set by the corporation for the leased fee interest in the lot for which the lessee must obtain a letter of credit, certificate of deposit, proof of funds, or approved application for loan pursuant to [subsection (a)(4)] shall not be admissible for any reason in any action, suit, or proceeding brought under this chapter. Any financial information the corporation may request and obtain from the lessees shall not be discoverable or admissible in any action, suit, or proceeding brought under this chapter.

(c) In the event of a wilful breach of contract of a lessee to purchase the leased fee interest, the corporation may sell or assign its interest without respect to the requirements of this section.

(d) The corporation may require additional testimony or evidence under oath in connection with any application. The determination by the corporation of any applicant's eligibility under this part shall be conclusive as to all persons thereafter dealing with the property; provided that the making of any false statement knowingly by applicants or other person in connection with any application shall constitute perjury and shall be punishable as such. The corporation shall adopt rules pursuant to chapter 91 to effectuate the purposes of this section. [L 1967, c 307, §22; HRS §516-33; am L 1972, c 2, §30; am L 1975, c 184, §2(13); am L 1978, c 140, §2; am L 1980, c 39, §3; am L 1983, c 204, §1; gen ch 1985; am L 1987, c 337, §16; am L 1988, c 104, §2; am L 1992, c 158, §2; am L 1993, c 326, §3; am L 1997, c 350, §14; am L 2005, c 196, §26(b); am L 2006, c 180, §16]

Cross References

Perjury and related offenses, see §§710-1060 to 1068.

" **§516-33.5 Deposits by lessees.** (a) The corporation may require the submission of a deposit by any lessee applying to the corporation for the purchase of a residential lot under this chapter. The amount of the deposit shall be established by rule. All interests earned on deposits submitted by lessees shall accrue to the lessees.

(b) The deposit may be applied by the corporation to payment of appraisal, survey, attorney fees, and any other cost the corporation has incurred as a result of the designation, with the remainder of the deposit to be applied toward the purchase of the owner's fee interest. The corporation shall incur no liability for such deposits under this section. [L

1978, c 140, §3; am L 1983, c 270, §3; am L 1987, c 337, §16; am L 1988, c 104, §2; am L 2001, c 60, §3; am L 2005, c 196, §26(b); am L 2006, c 180, §16]

" **§516-34 Mortgages, agreements of sale, other instruments.**

(a) If an applicant who wishes to purchase the leased fee interest in the applicant's residential leasehold lot is unable to obtain sufficient funds at reasonable rates from private lenders, the Hawaii housing finance and development corporation may, by way of mortgage, agreement of sale or other instruments to secure the indebtedness, loan to the purchaser up to ninety per cent of the purchase price; provided that such agreement of sale shall be for a term not to exceed three years; provided further that the corporation, upon its discretion, may extend such agreement of sale for not more than two years if the lessee requests such extension. In case of any dispute of the extension of the agreement of sale, the lessee shall bear the burden of proof to show good cause for such extension.

(b) The purchaser of the leased fee interest shall pay not less than ten per cent of the price and execute with the corporation an agreement of sale, or mortgage, or other instrument to secure the indebtedness under the terms of which the unpaid balance and the interest thereon, at a reasonable rate determined by the corporation, shall be paid in monthly installments over such periods as the corporation may determine. Every mortgage, agreement of sale, other instruments to secure the indebtedness, or instrument of indebtedness shall be freely assignable by the corporation and may contain such other provisions as are usually found in such instruments and shall provide that the purchaser may prepay the whole or any part of the unpaid balance of the purchase price plus accrued interest at any time without prepayment penalty.

(c) If the purchaser defaults on the payment of any loan, the corporation shall take all necessary action to collect the delinquent principal and interest on the loan and may take all actions allowed to holders of obligations, including the power to repossess, purchase, lease, rent, repair, renovate, modernize, and sell the property foreclosed. [L 1967, c 307, §23; HRS §516-34; am L 1968, c 46, §2g; am L 1975, c 184, §2(14); gen ch 1985; am L 1987, c 337, §16; am L 1988, c 104, §2; am L 1997, c 350, §14; am L 2005, c 196, §26(b); am L 2006, c 180, §16]

" **§516-35 Restrictions on sale and use of residential lots.**

(a) If state moneys are used for the purchase of the owner's basis, then for a period of ten years after the purchase from the corporation of the leased fee interest in a residential lot,

the purchaser shall not transfer any interest in the property unless the purchaser has first notified the corporation in writing of the purchaser's intention to do so.

The notice shall specify the purchaser's address and upon receipt of the notice, the corporation shall have the first option to purchase the land at the original purchase price of the leased fee from the corporation plus ten per cent a year from the date of said original purchase up to the time of repurchase or the fair market value at the time of repurchase, whichever is lower, plus the fair market value of the improvements; provided that title to a dwelling unit and the property or lease may pass to a family member by devise or through the laws of descent, notwithstanding any qualifications set forth in section 516-33 or the rules and regulations established by the corporation.

At the time of the repurchase, the fair market value of the land and the improvements shall be determined by a qualified appraiser, selected by the purchaser from a list of three appraisers provided by the corporation, whose services shall be paid for by the corporation; provided that the appraisal is subject to review by the corporation prior to acceptance. If the purchaser disagrees with the value, the purchaser may appoint the purchaser's own appraiser at the purchaser's own cost and any further disagreement on the value may be resolved by negotiation or otherwise.

(b) Within sixty days after the receipt of the notice the corporation shall in writing notify the purchaser at the address so specified whether it elects to exercise its option. The date of election to purchase shall constitute the date of valuation for repurchase. Nonpayment of the purchase price by the corporation within ninety days from the date of election shall constitute a default and shall void the election and terminate the right to exercise the option by the corporation. If the corporation refuses, or fails within the sixty-day period to reply to the offer, the purchaser may sell the fee simple interest in the property, or lease the property for a period not to exceed one year, to any person, free from any price restrictions; provided that if the purchaser leases the property, the purchaser shall, upon expiration of the term of the lease, again comply with the requirements of subsection (a) whenever the expiration date of the term of the lease is within the ten-year period stated in subsection (a); further provided that if the purchaser notifies the corporation of the purchaser's intention to sell the property, but does not sell or lease the property within two years after the date the notice was received by the corporation, the purchaser must again comply

with the requirements of subsection (a) if the ten-year period stated in subsection (a) has not expired.

(c) The corporation may lease, rent, or resell, any lot and improvements purchased by it under this part.

(d) Any original lease, deed, agreement of sale, mortgage, and other instruments of conveyance issued by the corporation under this part shall expressly contain the restriction on sale and use of the residential lot as prescribed by this section. [L 1967, c 307, §24; HRS §516-35; am L 1975, c 184, §2(15); am L 1976, c 242, §3; gen ch 1985; am L 1987, c 337, §16; am L 1988, c 104, §2; am L 2005, c 196, §26(b); am L 2006, c 180, §16]

" **§516-35.1 Foreclosure and sale by mortgagees.** If the leased fee, fee simple title or lease to a lot, purchased or acquired from the Hawaii housing finance and development corporation under this chapter is secured by a mortgage held by a lending institution authorized to do business as a lending institution either in the State or elsewhere in the United States, upon foreclosure of the mortgage, the leased fee, the fee simple title or the lease may be sold to any purchaser, including the holder of the mortgage, without regard to whether or not the purchaser is qualified under the provisions of this chapter to own or otherwise acquire the leased fee, the fee simple title, or the lease. The mortgage so held, and the interest so acquired by the purchaser on such foreclosure, shall be freely assignable, notwithstanding the provisions of section 516-35. The term, "lending institution," includes an insurer or guarantor of the obligation or condition of the mortgage, including the Federal Housing Administration, the Federal National Mortgage Association, the Veterans Administration, or any other federal agency and their respective successors and assigns or any lending institution authorized to do business in the State or elsewhere in the United States; provided that the rights and powers of nongovernmental holders of mortgages shall not be any greater than those of the aforementioned federal agencies.

Notwithstanding any provision in this chapter to the contrary, in sales by the corporation of the leased fee or the fee simple title, or in leases of lots, the corporation may waive or modify any restrictions contained in this chapter, if such waiver or modification is necessary to enable any of aforementioned federal agencies or any lending institution authorized to do business in the State or elsewhere in the United States to participate in any loan secured by a mortgage on the leased fee, the fee simple interest or the lease; provided any such waiver or modification shall not confer any greater rights or powers in the holder than those which would be

required by the Federal Housing Administration. [L 1968, c 46, §2i; am L 1987, c 337, §16; am L 1988, c 104, §2; am L 1997, c 350, §14; am L 2005, c 196, §26(b); am L 2006, c 180, §16]

Note

Veterans Administration referred to in text is now the Department of Veterans Affairs.

" **§§516-36 to 39 REPEALED.** L 1975, c 184, §2(16).

" **§516-40 Bonds as legal investments.** The State and all of its public officers, municipal corporations, political subdivisions, and public bodies, all banks, bankers, trust companies, savings banks and institutions, including savings and loan associations, all investment companies, insurance companies, insurance associations, and other persons carrying on an insurance business in the State, and all personal representatives, guardians, trustees, and other fiduciaries in the State may legally invest moneys or funds belonging to them or within their control and available for investment under other provisions of law, in any bonds or other obligations issued by the Hawaii housing finance and development corporation under this part, and such bonds and other obligations of the corporation shall be authorized security for all public deposits and shall be fully negotiable in the State. It is the purpose of this section to authorize any of the foregoing to use any funds owned or controlled by them, including (but not limited to) sinking, insurance, investments, retirement, compensation, pension, and trust funds and funds held on deposit, for the purchase of any such bonds or other obligations; provided that nothing contained in this section shall operate to relieve any person, firm, or corporation from liability for failure to exercise reasonable care in selecting investments or, in the case of a guardian or trustee, from liability for failure to exercise the judgment and care to observe the duties required of a guardian or trustee by article 8 of chapter 412 and section 554-6. [L 1967, c 307, §29; HRS §516-40; am L 1976, c 200, pt of §1; am L 1987, c 337, §16; am L 1988, c 104, §2; am L 1993, c 350, §32; am L 1997, c 350, §14; am L 2005, c 196, §26(b); am L 2006, c 180, §16]

" **§516-41 Exemption from taxation and assessments.** The Hawaii housing finance and development corporation and the property acquired by it under this part, if not leased or sold, are exempt from any and all taxes and assessments. Bonds, notes, debentures, and other evidences of indebtedness issued by

the corporation are declared to be issued for a public purpose and to be public instrumentalities and, together with interest thereon, shall be exempt from taxes. [L 1967, c 307, §30; HRS §516-41; am L 1987, c 337, §16; am L 1988, c 104, §2; am L 1997, c 350, §14; am L 2005, c 196, §26(b); am L 2006, c 180, §16]

" **§516-42 Investment of reserves.** The Hawaii housing finance and development corporation may invest any funds held in reserves or sinking funds, or any funds not required for immediate disbursement, in property or securities in which savings banks may legally invest funds subject to their control. No provisions with respect to the acquisition, operation, or disposition of property by other public bodies are applicable to the corporation under this part unless otherwise specifically provided by law. [L 1967, c 307, §31; HRS §516-42; am L 1987, c 337, §16; am L 1988, c 104, §2; am L 1997, c 350, §14; am L 2005, c 196, §26(b); am L 2006, c 180, §16]

" **§516-43 Security for funds deposited.** The Hawaii housing finance and development corporation may, by resolution, provide that all moneys deposited by it shall be secured: (1) by any securities by which funds deposited by the state director of finance may be legally secured as provided in section 38-3, or (2) by an undertaking with such sureties as are approved by the corporation faithfully to keep and pay over upon the order of the corporation any such deposits and agreed interest thereon, and all banks and trust companies may give any such security for such deposits. [L 1967, c 307, §32; HRS §516-43; am L 1987, c 337, §16; am L 1988, c 104, §2; am L 1997, c 350, §14; am L 2005, c 196, §26(b); am L 2006, c 180, §16]

Revision Note

Section "38-3" substituted for "38-2".

" **§516-44 REPEALED.** L 2015, c 237, §39.

" **§516-45 General obligation bonds.** The director of finance may, from time to time, issue general obligation bonds in such amounts as may be authorized by the legislature, for the purpose of acquisition by the Hawaii housing finance and development corporation of residentialouselots within development tracts pursuant to chapter 516, part II or for the acquisition of suitable properties to exchange pursuant to section 516-24.5 or for the acquisition by the department of land and natural resources under section 171-50.1 of suitable properties for exchange pursuant to section 171-50.2 to effectuate the purpose

of this chapter. Pending the receipt of funds from the issuance and sale of general obligation bonds, amounts required within the limits of legislative authorization may be advanced to the Hawaii housing finance and development corporation from the general fund of the State. Upon the receipt of the bond funds, the general fund shall be reimbursed the amount advanced. [L 1971, c 215, §4; am L 1975, c 184, §2(17); am L 1987, c 337, §16; am L 1988, c 104, §2; am L 1997, c 350, §14; am L 2005, c 196, §26(b); am L 2006, c 180, §16; am L 2015, c 237, §38]

" **§516-51 Preliminary negotiation required.** (a) Upon the filing of a petition by the number of lessees required by section 516-22 with the Hawaii housing finance and development corporation, the corporation shall request the lessor and the lessees or their designated agents to negotiate the just compensation which the lessees will pay to the lessor to acquire the lessor's interest in the development tract. If no agreement is reached within sixty days after the request to negotiate, the parties shall simultaneously exchange written final offers together with any appraisals, other documents, and any other expert opinions on which their negotiating positions were based. Copies of the final offers and related documents shall be submitted to the corporation and the corporation may use the information in determining, prior to commencing condemnation proceedings, the probability that lessees will be able to meet the financial requirements of section 516-33(a)(4).

(b) This preliminary negotiation shall be in advance of and shall not constitute any part of any action in condemnation or eminent domain.

Any offers, appraisals, other documents, or any other expert opinions giving a value of the lessor's interest in the development tract which were prepared by a party for use in preliminary negotiations as provided for in this section, for setting qualification amounts pursuant to section 516-33(a)(4), or for negotiations to determine the just compensation after designation to acquire the lessor's interest in the development tract, and were not prepared for use in the trial shall not be discoverable, usable, or admissible by an opposing or adverse party in any action, suit, or proceeding brought under this chapter. [L 1976, c 242, pt of §4; am L 1980, c 107, pt of §3; am L 1983, c 203, §2; am L 1984, c 157, §1; am L 1987, c 337, §16; am L 1988, c 104, §2; am L 1997, c 350, §14; am L 2005, c 196, §26(b); am L 2006, c 180, §16]

Revision Note

Section "516-33(a)(4)" substituted for "516-33(4)".

Case Notes

Former mandatory arbitration provisions of this part held unconstitutional, but severable. 471 F. Supp. 871.

" **§§516-52 to 55 REPEALED.** L 1980, c 107, §4.

" **§516-56 Eminent domain trial.** The parties to the eminent domain action brought under this chapter shall be the corporation as plaintiff and the lessees and all other necessary parties as defendants. The corporation does not have the burden of proof in establishing the fair market value of the leased fee interest being acquired. Instead, all parties, including the corporation, shall be given an opportunity to present evidence of the fair market value of the leased fee interest being acquired. [L 1983, c 203, §3; am L 1987, c 337, §16; am L 1988, c 104, §2; am L 1991, c 154, §1; am L 2005, c 196, §26(b); am L 2006, c 180, §16]

Case Notes

Pursuant to this section, defendant, because defendant was a lessee of disputed property, was named as co-defendant in condemnation action; defendant had standing to move to set aside the action in which defendant was named a party. 77 H. 144, 883 P.2d 65.

"PART III. RIGHTS OF LESSEES

§516-61 Applicability. Except as otherwise expressly provided, this part applies to all leases of residential lots existing and in force on June 24, 1967, and to all leases of residential lots executed thereafter.

Notwithstanding any term, condition, or provision in any lease to the contrary, the lessee of a residential lot shall have all of the rights enumerated in this part. [L 1967, c 307, §34; HRS §516-61; am L 1968, c 46, §2j]

" **§516-62 Discrimination.** No person shall be denied the right to become a lessee of a residential lot, because of the person's race, religion, sex, ancestry, or a physical handicap. [L 1967, c 307, §35; HRS §516-62; am L 1976, c 159, §8; gen ch 1985]

" **§516-63 Free assignability.** Except as otherwise provided in section 516-35 and restrictions placed in leases by state or

county agencies, a lessee may assign the lessee's lease at any time without the approval or consent of the lessor, and the assignee shall have the same rights and obligations under the lease as the original lessee; provided that no such assignment shall be effective to transfer any interest in the lease unless the lessor has received (1) either a true executed copy of such assignment or written notice thereof, (2) a reasonable service charge, except in case of an assignment by way of mortgage or assignment to or by the Federal Housing Administration or Veterans Administration or the Federal National Mortgage Association or a foreclosure of mortgage or assignment in lieu of foreclosure, and (3) the written undertaking of the assignee to perform all obligations of the lessee under the lease, which undertaking may be incorporated in such assignment. No such assignment shall release the assignor from liability under the lease unless the lessor consents in writing to the assignment. A consent to the assignment shall be deemed a consent to the release of the assignor from liability under the lease. The lessor shall not require payment of any money for the lessor's consent except the service charge, nor withhold such consent unreasonably. Any person acquiring the leasehold estate in consideration of the extinguishment of a debt secured by mortgage of the lease or through foreclosure sale, judicial or otherwise, shall be liable to perform the obligations imposed on the lessee by the lease only during the period such person has possession or ownership of the leasehold estate. [L 1967, c 307, §36; HRS §516-63; am L 1968, c 46, §2k; gen ch 1985; am L 1986, c 218, §1]

Note

Veterans Administration referred to in text is now the Department of Veterans Affairs.

" **§516-64 Forfeiture.** No forfeiture of the lessee's interest in a leasehold shall be declared by the lessor for the lessee's failure to pay the rent or otherwise to perform the lessee's obligations under the lease, unless the lessor has given written notification to the lessee of the default and has given the lessee at least thirty days within which to correct the default. [L 1967, c 307, §37; HRS §516-64; gen ch 1985]

" **§516-65 Extension.** From time to time during the first twenty years of the term of any lease, the lessee shall have the right to extend the lease term to fifty-five years, commencing on the first day of the calendar month in which the lessee gives

written notice thereof to the lessor, subject to the following conditions:

- (1) At the time the right to extend the lease is exercised, the unexpired term of the lease is less than fifty years;
- (2) The extension is for the purpose of mortgaging the leasehold interest;
- (3) The lessee is not then in default in any respect under the lease; and
- (4) The notice is accompanied by payment of a reasonable service charge.

This section applies only to leases executed and effective subsequent to June 24, 1967. [L 1967, c 307, §38; HRS §516-65]

" **§516-66 Lease rental.** In every case of an extension under section 516-65 the annual lease rental during the first thirty years shall not exceed an amount determined as follows:

- (1) Compute to nearest whole year, one hundred per cent of the unexpired period of fixed rent at the commencement of the extended term;
- (2) Multiply the number of years computed in (1) by the fixed annual rent in effect immediately prior to the extension;
- (3) Deduct from thirty years the number of years computed in (1) and multiply that difference by the annual rent determined by mutual agreement of lessor and lessee within thirty days after such extension or by arbitration in accord with chapter 658A; and
- (4) Add the amounts computed in (2) and (3) and divide that sum by thirty. This sum rounded to the nearest dollar shall be the annual rent for the first thirty years of the extended term; provided that such rent shall not without the consent of the lessor be less than the annual rent in effect immediately prior to such extension.

The annual rent payable hereunder for and during the remaining period of the extended term shall be determined by mutual agreement of the lessor and the lessee, or if they fail to reach such agreement at least ninety days before the commencement of the period, by arbitration in accordance with chapter 658A. [L 1967, c 307, §39; HRS §516-66; am L 1975, c 184, §2(18); am L 2001, c 265, §4]

" **§516-67 Zoning changes.** A lessor, fee owner, or any legal or equitable owner applying for a change in zoning in any area shall notify all of the lessor's, fee owner's, or legal or equitable owner's lessees within three-fourths miles of the land

proposed to be rezoned of the application and its contents at least thirty days before filing the same before any public zoning authority. [L 1967, c 307, §40; HRS §516-67; gen ch 1985]

" **§516-68 Rights to self-organization; remedies.** Lessees in a development tract shall have the right of self-organization and the right to form, join, or assist each other in forming associations for their mutual benefit or to select representatives of their choosing to engage in bargaining with their lessor or to secure other mutual aid or protection as may be necessary or desirable with respect to their respective leasehold interests. No lessor or agent of the lessor shall interfere with, restrain, or coerce any lessee in the exercise of the rights granted by this section or dominate or attempt to control the formation of any such organization. Neither the lessor nor the organization or the duly authorized representative of a majority of the lessees shall refuse to bargain collectively in good faith with each other. In the event of any such refusal or violation of this section, either party may file a complaint with the Hawaii housing finance and development corporation, and the corporation, after due notice of hearing and hearings, may issue such cease and desist orders as shall be meet and just in the light of the evidence adduced. [L 1967, c 307, §41; HRS §516-68; am L 1987, c 337, §16; am L 1988, c 104, §2; am L 1997, c 350, §14; am L 2005, c 196, §26(b); am L 2006, c 180, §16]

" **§516-69 Sale of fee by lessor.** No fee owner of any residential lot under lease shall sell the leased fee interest to the lot to any third party unless the fee owner has first given a written thirty-day notice to the lessee and the corporation of such intention. [L 1967, c 307, §42; HRS §516-69; gen ch 1985; am L 1987, c 337, §16; am L 1988, c 104, §2; am L 2005, c 196, §26(b); am L 2006, c 180, §16]

" **§516-70 Reversion of improvements.** (a) This section applies to all leases of residential lands as defined by section 516-1.

(b) At the termination of any lease, or at the expiration of the lease term, the lessee may, if not then in default under the terms of the lessee's lease, remove all onsite improvements on the lot which were constructed at the cost of, or otherwise paid for by, the lessee, without compensating the lessor therefor. If the lessee notifies the lessor in writing within sixty days before the termination or expiration that the lessee declines to remove such onsite improvements and if the lessee is not then in default under the terms of the lessee's lease, and

if the lessor refuses to extend the term of the existing lease or to issue a new lease for a term of at least thirty years at a rental that is mutually agreeable to the parties or failing such agreement that is determined by arbitration pursuant to chapter 658A, the lessor shall be required to compensate the lessee for the current fair market value of all such onsite improvements. Such improvements shall be appraised at the expense of the lessee. The appraiser selected shall be by mutual agreement of the lessee and the lessor or in conformance to chapter 658A. The compensation shall be determined by mutual agreement or in conformity with chapter 658A, and the compensation shall be paid within thirty days of determination. Such expense of arbitration shall be equally shared by both parties. [L 1967, c 307, §43; HRS §516-70; am L 1975, c 184, §2(19); gen ch 1985; am L 2001, c 265, §4]

Revision Note

Section "516-1" substituted for "516-1(5)".

Case Notes

Requirement that lessor purchase leasehold improvements unconstitutionally impairs obligation of preexisting lease contract. 69 H. 112, 736 P.2d 55.

" **§516-71 Residential lease; disclosure.** (a) Except as otherwise provided for in this section, for any sale of a leasehold residential lot, no later than ten calendar days after the acceptance of the deposit, receipt, offer, and acceptance contract (DROA) or other similar contract, the seller shall directly or through the seller's agent provide to the buyer, a copy of the original recorded lease and any amendments thereto for the buyer's approval and acceptance. A sale for the purposes of this subsection shall not be deemed to include any transfer to a co-owner, or to a spouse or reciprocal beneficiary, parent or child of the seller, or to any stranger by devise, descent, court order, or by operation of law, including, but not limited to, any transfer by foreclosure, bankruptcy, or partition sale. Upon receipt of the original lease and amendments thereto, the buyer shall have ten calendar days to review, accept, or reject the terms of the lease.

(b) In addition to the requirements set forth in subsection (a), the buyer shall acknowledge receipt of the lease documents specified under subsection (a) through a signed receipt or a signed DROA or other contract. The receipt or contract shall include at least the following information:

- (1) A standardized summary, as set forth on the optional standardized summary form in this chapter, or in a form similar to the optional standardized summary form, of the lease provisions in plain language which shall contain information on the following: the length of the lease, lease rent terms, lease rent renegotiation dates, how renegotiated lease rents will be calculated; and surrender clause provisions;
- (2) A standardized glossary, satisfied by use of a Hawaii governmental publication, of commonly used lease terms in plain language; and
- (3) A statement that the buyer has read and understands the provisions of the standardized summary of the lease provisions.

(c) Within ten calendar days of acknowledged receipt of the contract specified in subsection (a), the buyer shall have the right to cancel the offer to purchase with no loss of deposit.

(d) The seller and buyer, on a standardized form, may agree to reduce or extend the time period provided herein for production and review of the applicable lease documents; provided that the agreement shall not constitute a waiver of the requirement to provide the applicable lease documents to the buyer. Buyers other than natural persons may waive, in writing, all the requirements of this section. [L 1989, c 168, §3; ree L 1990, c 277, pt of §1; am L 1991, c 276, §3; am L 1997, c 383, §63]

" **[§516-72] Civil penalty.** Failure to furnish disclosures substantially complying with the requirements of section 516-71 shall entitle the buyer to the recovery of a civil penalty of \$1,000 in any proceeding at law brought within one year of the violation and the violator shall be liable further for the actual damages of the buyer, if any, reasonable attorneys' fees and court costs. [L 1991, c 276, §4]

" **[§516-73] Suggested form of standardized summary of lease provisions.** A standardized summary of lease provisions executed pursuant to section 516-71 of this chapter may, but need not, be substantially in the following form:

STANDARDIZED SUMMARY OF LEASE PROVISIONS

This receipt dated _____, between _____
 _____ (the "buyer"), and
 _____ (the "seller"),
 tax map key no. _____ () / / / _____ (the "property").

Lessor: _____
 Sublessor: _____
 Lease Expiration: _____ Surrender Clause: (yes or none)
 Lease Rent: \$ _____ per _____ until _____
 \$ _____ per _____ until _____
 \$ _____ per _____ until _____
 Renegotiation Dates: _____
 Renegotiation Terms: _____

I understand the information above is a summary of the terms of the lease and that for more detailed information I should read the lease.

I understand that the subject property is leasehold property and I will acquire the right to occupy and use the leased real property for the time stated in the lease agreement. I will not acquire outright or absolute ownership of the land or fee simple ownership. The land is owned by lessor or the leased fee owner, to whom I, the lessee, will agree to make lease rent payments and comply with the terms of the lease or be subject to the lessor's enforcement actions. The lease rent payments are usually fixed for specific amounts at fixed periods of time, then subject to renegotiation. Renegotiation may be based on formula or arbitration set in the lease agreement or by law or by agreement between the lessor and lessee. THE RENEGOTIATED LEASE RENTS MAY INCREASE SIGNIFICANTLY. AT THE END OF THE LEASE, I MAY HAVE TO SURRENDER THE PROPERTY (SURRENDER CLAUSE) AND THE LAND BACK TO THE LESSOR WITHOUT ANY COMPENSATION.

I understand when leasehold property is acquired, title is normally conveyed by means of an assignment of lease, whose purpose is similar to that of a deed. The legal and practical effect is different because the assignment conveys only the rights and obligations created by the lease to the property, not the property itself.

I UNDERSTAND THAT IF I HAVE ANY LEGAL QUESTIONS ABOUT LEASEHOLD PROPERTY, ABOUT THE LEASE DOCUMENTS, ABOUT THE TERMS OF THE LEASE, AND ITS CONSEQUENCES, I SHOULD SEEK THE ADVICE OF AN ATTORNEY.

- [] I HAVE READ AND UNDERSTAND THE PROVISIONS OF THE LEASE DOCUMENTS RECEIVED, AND ACCEPT THE TERMS OF THE LEASE.
- [] I DO NOT ACCEPT THE TERMS OF THE LEASE AND CANCEL THE ACCEPTANCE CONTRACT (DROA).

_____ Buyer's signature
 _____ Buyer's signature
 Date: _____, _____AM/PM

Revision Note

Reference to "19_____" referred to in date lines omitted as obsolete.

"PART IV. JUDICIAL DECLARATION

§516-81 REPEALED. L 1975, c 184, §2(20).

" **[§516-82] Severability.** If any part, section, sentence, clause, or phrase of this chapter, or its application to any person or transaction or other circumstances, is for any reason held to be unconstitutional or invalid, the remaining parts, sections, sentences, clauses, and phrases of this chapter, or the application of this chapter to other persons or transactions or circumstances, shall not be affected. The legislature hereby declares that it would have passed this chapter and each part, section, clause, or phrase thereof, irrespective of the fact that any one or more parts, sections, sentences, clauses, or phrases of this chapter, or its application to any person or transaction or other circumstance, be declared unconstitutional or invalid. [L 1975, c 184, §2(21)]

Case Notes

Since Hawaii Land Reform Act contains comprehensive severability clause, unless statute stands or falls as a whole, specific invalid provisions may be separated out. 471 F. Supp. 871.

" **[§516-83] Legislative findings and declaration of necessity; purpose.** (a) The legislature finds that:

- (1) There is a concentration of land ownership in the State in the hands of a few landowners who have refused to sell the fee simple titles to their lands and who have instead engaged in the practice of leasing their lands under long-term leases;
- (2) The refusal of such landowners to sell the fee simple titles to their lands and the proliferation of such practice of leasing rather than selling land has resulted in a serious shortage of fee simple residential land and in an artificial inflation of residential land values in the State;
- (3) Due to such shortage of fee simple residential land and such artificial inflation of residential land values, the people of the State have been deprived of

a choice to own or take a lease of the land on which their homes are situated and have been required instead to accept long-term leases of such land which contain terms and conditions that are financially disadvantageous, that restrict their freedom to fully enjoy such land and that are weighted heavily in favor of the few landowners of such land;

- (4) The economy of the State and the public interest, health, welfare, security, and happiness of the people of the State are adversely affected by such shortage of fee simple residential land and artificial inflation of residential land values and by such deprivation of the people of the State of the choice to own or take a lease of the land on which their homes are situated and the required acceptance of such long-term leases of such lands;
- (5) The acquisition of residential land in fee simple, absolute or otherwise, at fair and reasonable prices by people who are lessees under long-term leases of such land and on which such land their homes are situated and the ability of such people to fully enjoy such land through ownership of such land in fee simple will alleviate these conditions and will promote the economy of the State and public interest, health, welfare, security, and happiness of the people of the State;
- (6) The cost of living in Hawaii is and has been high. In recent years inflation has drastically increased the cost of living in the State. The spiraling cost of living affects all people through erosion of the purchasing power of whatever monetary resources they command. For a growing proportion of Hawaii's population, quite possibly a majority, the high cost of living is denying them such basic necessities as sufficient nutritional intake, safe and healthy housing accommodations, clothing, and adequate preventive and curative health services. A substantive and significant contributing factor to the high and rising cost of living is the high cost of land whether leasehold or fee. Stabilizing the costs of land or, at least, slowing the artificial inflation of land values would curb the rising cost of living in Hawaii and, ultimately, contribute to the welfare of all people of the State by improving their standard of living;
- (7) The Constitution of the State of Hawaii provides the State the power to provide assistance for persons

unable to maintain a standard of living compatible with decency and health. The rising cost of land tied to other cost of living increases is swelling the ranks of those persons unable to maintain a decent and healthful standard of life. If the inflationary trend of land continues unchecked, the resultant inflationary total cost of living could create such a large population of persons deprived of decent and healthful standards of life that the consequent disruptions in lawful social behavior could irreparably rend the social fabric which now protectively covers the life and safety of all Hawaii's people. The threat posed by this possibility is sufficiently real and imminent to warrant state action to redistribute land as a means of curbing continuing inflationary rises in land values;

- (8) The right to own land is not an irrevocable grant of a special privilege where it operates against the general welfare of the many for the particular benefit of the few;
- (9) Land, in common with other natural resources, is of finite quantity; a fact particularly obvious in Hawaii. In recent decades there has been growing general agreement that the wise conservation, preservation, use and management of exhaustible natural resources such as land are matters mandating an active governmental role. There is an intimate relationship between the monetary values accorded land in Hawaii and the stability and strength of the State's economy as a whole. Land values, artificially inflated by the high concentration of ownership, skew the state economy toward unnecessarily high levels. The pervasive and substantial contribution made to inflation by high land values creates a potential for economic instability and disruption. Economic inflation, instability and disruptions have real and potential damaging consequences for all members of an affected society. Checking inflation, improving the stability of the economy, and forestalling disadvantageous economic disruptions all are productive of general benefit to all members of the Hawaiian society. The sound and wise conservation, preservation, use and management of land cannot be separated from the subject of patterns of land ownership. To accomplish the public purposes of wisely conserving, preserving, using, and managing the land in the State requires changing present patterns

of land ownership. Public laws, expenditures, programs, and policies which contribute to the realization of these public purposes serve a public use since they ultimately benefit the entire community. Changing present patterns of land ownership by allowing lessees under long-term leases of residential land to purchase in fee simple, absolute or otherwise, the land on which their homes are situated, through governmental intervention including exercise of the power of eminent domain to acquire fee simple title to such land and public financing of such purchase and such condemnation and payment through the issuance of bonds, the expenditure of general revenue funds, and the use of private funds which are at the disposal of the State, will help satisfy the pressing public necessity for a secure, strong and stable economy;

- (10) The State's acquisition of residential lands held in fee simple, through the exercise of the power of eminent domain, for the purposes of this chapter is for the public use and purpose of protecting the public safety, health and welfare of all people in Hawaii;
- (11) Inflation lessens the quality of life of all members of this afflicted society and is particularly invidious in its impact on the ninety plus per cent of the population who are in the poverty, and low through middle income groups. The State has limited abilities to curb inflation and, perhaps, the only useful means available is the State's power to control land values. There is a pressing public necessity for the State to do whatever it can to curb inflation and to keep the cost of living at a level where it is possible and manageable to provide all citizens a decent and healthful standard of life. The public use and purpose of providing all citizens a decent and healthful standard of life will be directly and substantially furthered by the State's acquisition of residential lands held in fee simple, through the exercise of the power of eminent domain, for the purposes of this chapter;
- (12) The use of the power of eminent domain to condemn the fee simple title to residential land and the payment of just compensation therefor for the purpose of making the fee simple title thereto and the use thereof available for acquisition by people who are lessees under long-term leases of such land and on

which such land their homes are situated is for a public use and purpose;

- (13) Legislation providing to people who are lessees under long-term leases of residential land on which their homes are situated the ability to fully enjoy such land through ownership of such land in fee simple, absolute or otherwise, is for a public purpose.

(b) It is therefore declared to be necessary and it is the purpose of this chapter to alleviate the conditions found in subsection (a) of this section by providing for the right of any person who is a lessee under a long-term lease of residential land in the State to purchase at a fair and reasonable price the fee simple title to such land, by providing for the condemnation of the fee simple title to such land and the payment of just compensation therefor by the State through the use of the power of eminent domain and by providing for the public financing of such purchase and such condemnation and payment through the issuance of bonds, the expenditure of general revenue funds, and the use of private funds which are at the disposal of the State. [L 1975, c 186, §2]

Law Journals and Reviews

Extending Land Reform to Leasehold Condominiums in Hawai'i.
14 UH L. Rev. 681.

Case Notes

Determination of whether taking is for public purpose is limited to whether there is a denial of substantive due process. Statute is constitutional if: (1) any possible rationale for the statute, expressed or not, is within state police power; and (2) statute is not arbitrary or product of legislative bad faith. 483 F. Supp. 63.

Discussed: 79 H. 64, 898 P.2d 576.

Mentioned: 471 F. Supp. 871; 74 H. 294, 845 P.2d 1186.

"PART V. FEE TITLE ACQUISITION LOAN PROGRAM

§516-91 Definitions. The following words or terms as used in this part shall have the following meanings unless a different meaning clearly appears from the context:

"Eligible borrower" means any lessee, irrespective of race, creed, national origin, or sex, who:

- (1) Qualifies to purchase the leased fee interest in the lessee's property under this chapter;
- (2) Has never before obtained a loan under this part; and

- (3) Meets other qualifications as established by rules adopted by the corporation.

"Eligible loan" means a loan to an eligible borrower for the purchase of the leased fee interest in the eligible borrower's house; provided that the property financed is and will be occupied as the principal place of residence by the eligible borrower, and meets other requirements as established by rules adopted by the corporation.

"Fee title acquisition loan programs" or "acquisition loan programs" includes all or any part of the loan to lenders program, the purchase of existing loans program, the advance commitments program, and the eligible loan funding program authorized under this part.

"Mortgage lender" means any bank, trust company, savings bank, national banking association, savings and loan association, building and loan association, mortgage banker, credit union, insurance company, or any other financial institution, or a holding company for any of the foregoing, which:

- (1) Is authorized to do business in the State;
- (2) Customarily provides services or otherwise aids in the financing of mortgages on single family or multi-family residential property; and
- (3) Is a financial institution whose accounts are federally insured, or is an institution which is an approved mortgagee for the Federal Housing Administration, or is an approved lender for the Veterans Administration or the United States Department of Agriculture, or is an approved mortgage loan servicer for the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

"Revenue bond" means bonds, notes, or other evidence of indebtedness of the corporation issued to finance any of the acquisition loan programs under this part.

"Trustee" means a national or state bank or trust company within or without the State which enters into a trust indenture.

"Trust indenture" means an agreement by and between the corporation and the trustee, which sets forth the duties of the trustee with respect to the revenue bonds, the security therefor, and other provisions as deemed necessary or convenient by the corporation to secure the revenue bonds. [L 1983, c 270, pt of §1; am L 1987, c 337, §16; am L 1988, c 104, §2; am L 1997, c 258, §20; am L 2005, c 196, §26(b); am L 2006, c 180, §16]

Revision Note

Veterans Administration in definition of "mortgage lender" is now the Department of Veterans Affairs.

" **§516-95 Rules; eligible loans.** (a) The corporation shall establish requirements for property financed by an eligible loan, and may consider, but not be limited to the location, age, condition, and other characteristics of the property.

(b) The corporation shall establish restrictions on the terms, maturities, interest rates, collateral, and other requirements for eligible loans.

(c) All eligible loans made shall comply with applicable state and federal laws. [L 1983, c 270, pt of §1; am L 1987, c 337, §16; am L 1988, c 104, §2; am L 2005, c 196, §26(b); am L 2006, c 180, §16]

" **§516-101 Revenue bonds; authorization.** (a) The corporation, with the approval of the governor, may issue from time to time revenue bonds in amounts not exceeding the total amount of bonds authorized to be issued by the legislature for the purpose of undertaking and maintaining any of the acquisition loan programs.

(b) All revenue bonds shall be issued pursuant to part III of chapter 39, except as provided in this part.

(c) The revenue bonds shall be issued in the name of the corporation, and not in the name of the State. The final maturity date of the revenue bonds may be any date not exceeding forty years from the date of issuance. [L 1983, c 270, pt of §1; am L 1987, c 337, §16; am L 1988, c 104, §2; am L 2005, c 196, §26(b); am L 2006, c 180, §16]

" **§516-102 Revenue bonds; payment and security.** (a) The revenue bonds shall be payable from and secured by the revenues derived from the benefits of the acquisition loan programs for which the revenue bonds are issued, including:

- (1) Any payment made for eligible loans or other agreements entered into for the acquisition loan programs;
- (2) Revenues derived from insurance proceeds;
- (3) Reserve accounts and earnings thereon; and
- (4) Revenues resulting from loans to mortgage lenders or from the payment on account of principal of and interest on loans purchased from mortgage lenders.

(b) The corporation may pledge any revenue derived from the acquisition loan programs financed from the proceeds of the revenue bonds to the punctual payment of the principal, interest, and redemption premiums, if any, on the revenue bonds.

(c) The revenue bonds additionally may be secured by the pledge or assignment of the loans and other agreements or any note or other undertaking, obligation, or property held by the corporation or any mortgage lender or its agent to secure the loans.

(d) Any pledge made by the corporation shall create a perfected security interest in the revenues, moneys, or property so pledged and thereafter received by the corporation from and after the time that a financing statement with respect to the revenues, moneys, or property so pledged and thereafter received shall be filed with the bureau of conveyances. Upon such filing, the revenues, moneys, or property so pledged and thereafter received by the corporation immediately shall be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be prior to the lien of all parties having claims of any kind in tort, contract, or otherwise against the corporation, irrespective of whether such parties have notice thereof. [L 1983, c 270, pt of §1; am L 1987, c 337, §16; am L 1988, c 104, §2; am L 2005, c 196, §26(b); am L 2006, c 180, §16]

" **§516-103 Revenue bonds; interest rate, price, and sale.**

(a) The revenue bonds shall bear interest at a rate or rates payable monthly, quarterly, or semiannually.

(b) The corporation shall include the costs of undertaking and maintaining the acquisition loan programs for which the revenue bonds are issued in determining the principal amount of revenue bonds to be issued. In determining the cost of undertaking and maintaining the acquisition loan programs, the corporation may include the cost of purchasing or funding loans or other agreements entered into for the acquisition loan programs; the costs of studies and surveys; insurance premiums; underwriting fees; financial consultant, legal, accounting, and marketing services incurred; reserve account, trustee, custodian, and rating agency fees; and interest on the bonds for a period not to exceed one year from the date of issuance.

(c) The revenue bonds may be sold at public or private sale, and for a price as may be determined by the corporation to be in the best interest of the State.

(d) Section 39-65 shall not apply to revenue bonds issued for the purpose of undertaking and maintaining any of the acquisition loan programs as permitted by this part. The legislature consents to the taxation by the United States of America of interest on revenue bonds issued for the purpose of undertaking and maintaining any of the acquisition loan programs as permitted by this part. [L 1983, c 270, pt of §1; am L 1987,

c 337, §16; am L 1988, c 104, §2; am L 2005, c 196, §26(b); am L 2006, c 180, §16]

Revision Note

Section "39-65" substituted for "39-61".

" **§516-104 Revenue bonds; investment of proceeds and redemption.** Subject to any agreement with the holders of its revenue bonds, the corporation may:

- (1) Invest its moneys not required for immediate use, including proceeds from the sale of any revenue bonds, in accordance with section 201H-77; and
- (2) Purchase its revenue bonds out of any fund or money of the corporation available therefor, and hold, cancel, or resell the revenue bonds. [L 1983, c 270, pt of §1; am L 1987, c 337, §16; am L 1988, c 104, §2; am L 1997, c 350, §16; am L 2005, c 196, §26(b); am L 2006, c 180, §16; am L 2007, c 249, §29]

" **§516-107 Trustee; designation, duties.** (a) The corporation shall designate a trustee for each issue of revenue bonds secured under the same trust indenture; provided that the trustee shall be approved by the director of finance.

(b) The trustee shall be authorized by the corporation to receive and receipt for, hold, and administer the proceeds of the revenue bonds, and to apply the proceeds to the purposes for which the bonds are issued.

(c) The trustee also shall be authorized by the corporation to hold and administer the acquisition loan program revenue bond special fund established pursuant to section 516-111, and to receive and receipt for, hold, and administer the revenues derived by the corporation from the benefits of the acquisition loan programs for which the revenue bonds are issued and to apply these revenues to the payment of the cost of administering, operating, and maintaining the acquisition loan programs, to pay the principal of and interest on these bonds, to the establishment of reserves, and to other purposes as may be authorized in the proceedings providing for the issuance of the revenue bonds.

(d) Notwithstanding section 39-68, the director of finance may appoint the trustee to serve as fiscal agent for:

- (1) The payment of the principal of and interest on the revenue bonds; and
- (2) The purchase, registration, transfer, exchange, and redemption of the bonds.

(e) The trustee shall perform additional functions with respect to the payment, purchase, registration, transfer, exchange, and redemption, as the director of finance may deem necessary, advisable, or expeditious, including the holding of the revenue bonds and coupons which have been paid and the supervision of the destruction thereof in accordance with the law.

(f) Nothing in this part shall limit or be construed to limit the powers granted to the director of finance in sections 36-3 and 39-13, and the third sentence of section 39-68, to appoint the trustee or others as fiscal agents, paying agents, and registrars for the revenue bonds or to authorize and empower those fiscal agents, paying agents, and registrars to perform the functions referred to in those sections. [L 1983, c 270, pt of §1; am L 1987, c 337, §16; am L 1988, c 104, §2; am L 2005, c 196, §26(b); am L 2006, c 180, §16]

Revision Note

Section "39-68" substituted for "39-65". "39-13" substituted for "39-12".

" **§516-108 Trust indenture.** (a) A trust indenture may contain covenants and provisions authorized by part III of chapter 39, and as deemed necessary or convenient by the corporation for the purposes of this part.

(b) A trust indenture may allow the corporation to pledge and assign to the trustee loans and other agreements related to the acquisition loan programs, and the rights of the corporation thereunder, including the right to receive revenues thereunder and to enforce the provision thereof.

(c) Where a trust indenture provides that any revenue bond issued under that trust indenture is not valid or obligatory for any purpose unless certified or authenticated by the trustee, all signatures of the officers of the State upon the revenue bonds required by section 39-56 may be facsimiles of their signatures.

(d) A trust indenture also shall contain provisions as to:

- (1) The investment of the proceeds of the revenue bonds, the investment of any reserve for the bonds, the investment of the revenues of the acquisition loan programs, and the use and application of the earnings from investments; and
- (2) The terms and conditions upon which the holders of the revenue bonds or any portion of them or any trustee thereof may institute proceedings for the foreclosure of any loan or other agreement or any note or other

undertaking, obligation, or property securing the payment of the bonds and the use and application of the moneys derived from the foreclosure.

(e) A trust indenture also may contain provisions deemed necessary or desirable by the corporation to obtain or permit, by grant, interest subsidy, or otherwise, the participation of the federal government in the acquisition loan programs or in the financing of the costs of administering, operating, or maintaining the acquisition loan programs. [L 1983, c 270, pt of §1; am L 1987, c 337, §16; am L 1988, c 104, §2; am L 2005, c 196, §26(b); am L 2006, c 180, §16]

Revision Note

Section "39-56" substituted for "39-64".

" **§516-111 Revenue bonds; special funds.** A separate special fund shall be established in accordance with section 39-62 for each acquisition loan program or part thereof financed from the proceeds of the revenue bonds secured under the same trust indenture. [L 1983, c 270, pt of §1; am L 1987, c 337, §16; am L 1988, c 104, §2; am L 1993, c 280, §12]

" **§516-121 Acquisition loan programs; procedures and requirements.** (a) The corporation shall establish procedures for:

- (1) The submission of requests or the invitation of proposals for loans to mortgage lenders;
- (2) The purchase of existing loans by auction, invitation of tenders, or negotiation;
- (3) The making of advance commitments to purchase and the purchasing of eligible loans to be made by mortgage lenders by auction, invitation of tenders, or negotiation; and
- (4) Loan applications made through mortgage lenders to eligible borrowers.

(b) The corporation shall establish standards and requirements for:

- (1) The allocation of loans to mortgage lenders;
- (2) The allocation of funds to purchase existing loans from mortgage lenders;
- (3) The making of advance commitments and allocation of funds to purchase eligible loans from mortgage lenders; and
- (4) The participation by mortgage lenders as originators and processors of eligible loans on behalf of the corporation.

(c) The standards and requirements for the allocation of funds to mortgage lenders adopted by the corporation shall be designed to include the maximum number of qualified mortgage lenders as participants in the acquisition loan programs.

(d) The corporation may adopt rules under chapter 91 necessary or convenient for the operation of the acquisition loan programs under this part. [L 1983, c 270, pt of §1; am L 1987, c 337, §16; am L 1988, c 104, §2; am L 2005, c 196, §26(b); am L 2006, c 180, §16]

" **§516-122 Acquisition loan programs; general powers.** (a) The corporation may make, enter into, and enforce all contracts or agreements which are necessary, convenient, or desirable for the purposes of the performance of its duties in executing the acquisition loan programs.

(b) The corporation may require representations and warranties as it determines necessary to secure its loans. [L 1983, c 270, pt of §1; am L 1987, c 337, §16; am L 1988, c 104, §2; am L 2005, c 196, §26(b); am L 2006, c 180, §16]

" **§516-123 Acquisition loan programs; self supporting.** The interest rate, fees, charges, premiums, and other terms of the loans made under the acquisition loan programs shall be at least sufficient to pay the cost of administering and maintaining the portion of the specific acquisition loan programs for which the revenue bonds have been issued, and to assure payment of the principal of and interest on the revenue bonds as they become due. [L 1983, c 270, pt of §1]

" **§516-124 Acquisition loan programs; fees.** The corporation may establish, revise, charge, and collect fees, premiums, and charges as necessary, reasonable, or convenient, for its acquisition loan programs.

The fees, premiums, and charges shall be deposited into the fee title acquisition loan program revenue bond special fund established for the particular acquisition loan program or part thereof from which the fees, premiums, and charges are derived as determined by the corporation. [L 1983, c 270, pt of §1; am L 1987, c 337, §16; am L 1988, c 104, §2; am L 2005, c 196, §26(b); am L 2006, c 180, §16]

" **§516-125 Acquisition loan programs; evidence of eligible loan.** (a) Each mortgage lender who participates in any acquisition loan program shall submit evidence, as deemed satisfactory by the corporation, that eligible loans have been made from the proceeds of the revenue bonds.

(b) The corporation may inspect the books and records of the mortgage lenders as may be necessary for this section. [L 1983, c 270, pt of §1; am L 1987, c 337, §16; am L 1988, c 104, §2; am L 2005, c 196, §26(b); am L 2006, c 180, §16]

" **§516-131 Loans to lenders program.** (a) The corporation may make loans to mortgage lenders under terms and conditions requiring that the loan proceeds be used within a time period prescribed by the corporation to make eligible loans in an aggregate principal amount substantially equal to the amount of the loan.

(b) The loan made to a mortgage lender shall be a general obligation of the respective mortgage lender.

(c) The loan as determined by the corporation shall:

(1) Bear a date or dates;

(2) Mature at a time or times;

(3) Be evidenced by a note, bond, or other certificate of indebtedness;

(4) Be subject to prepayment; and

(5) Contain other provisions consistent with this part.

(d) Subject to any agreement with the holders of its revenue bonds, the corporation may consent to any modification to the rate of interest, time, and payment of any installment of principal or interest, security or any other term of any loan to a mortgage lender or any bond, note, contract, or agreement of any kind to which the corporation is a party. [L 1983, c 270, pt of §1; am L 1987, c 337, §16; am L 1988, c 104, §2; am L 2005, c 196, §26(b); am L 2006, c 180, §16]

" **§516-132 Loan to lenders program; collateral security.**

(a) Loans made to mortgage lenders additionally may be secured by a pledge of a lien upon collateral security in an amount as the corporation deems necessary to assure the payment of principal of and interest on the loans as they become due.

(b) The corporation shall determine the nature and type of collateral security required.

(c) A statement designating the collateral security pledged, the mortgage lender pledging the collateral, and the corporation's interest in the pledged collateral may be filed with the bureau of conveyances. Where a statement has been filed, no possession, further filing, or other action under any state law shall be required to perfect any security interest which may be deemed to have been created in favor of the corporation. The mortgage lender shall be deemed the trustee of an express trust for the benefit of the corporation in all matters relating to the pledged collateral.

(d) Subject to any agreement with the holders of its revenue bonds, the corporation may collect, enforce the collection of, and foreclose on any collateral securing its loans to mortgage lenders. The corporation may acquire, take possession of, sell at public or private sale with or without bidding, or otherwise deal with the collateral to protect its interests. [L 1983, c 270, pt of §1; am L 1987, c 337, §16; am L 1988, c 104, §2; am L 2005, c 196, §26(b); am L 2006, c 180, §16]

" **§516-141 Purchase of existing loans program.** (a) The corporation may contract with a mortgage lender to purchase, in whole or in part, existing loans, whether or not eligible loans. The contract may contain provisions as determined by the corporation to be necessary or appropriate to provide security for its revenue bonds, including but not limited to provisions requiring the:

- (1) Repurchase of the loans, in whole or in part, by mortgage lenders at the option of the corporation;
- (2) Payments of premiums, fees, charges, or other amounts by mortgage lenders to provide a reserve or escrow fund for the purposes of protecting against loan defaults; and
- (3) Guarantee by, or for recourse against, mortgage lenders, with respect to defaults on these loans of the corporation.

(b) The corporation shall require as a condition of each purchase of existing loans from a mortgage lender that the mortgage lender proceed to make and disburse eligible loans in an aggregate principal amount substantially equal to the amount of the proceeds from the purchase by the corporation of loans therefrom. [L 1983, c 270, pt of §1; am L 1987, c 337, §16; am L 1988, c 104, §2; am L 2005, c 196, §26(b); am L 2006, c 180, §16]

" **§516-151 Advance commitments program.** (a) The corporation may contract with a mortgage lender for the advance commitment to purchase eligible loans.

(b) The contract may contain provisions as determined by the corporation to be necessary or appropriate to provide security for its revenue bonds. [L 1983, c 270, pt of §1; am L 1987, c 337, §16; am L 1988, c 104, §2; am L 2005, c 196, §26(b); am L 2006, c 180, §16]

" **§516-161 Eligible loan funding program.** (a) The corporation may make or contract directly with mortgage lenders to fund eligible loans.

(b) The contract may contain provisions as determined by the corporation to be necessary or appropriate to provide security for its revenue bonds. [L 1983, c 270, pt of §1; am L 1987, c 337, §16; am L 1988, c 104, §2; am L 2005, c 196, §26(b); am L 2006, c 180, §16]

" **§516-171 Loans; service and custody.** The corporation may contract for the service and custody of its loans. The contract may provide for the payment of fees or charges for the services rendered; provided that the fees or charges shall not exceed the usual, customary, and reasonable charges for the services rendered. [L 1983, c 270, pt of §1; am L 1987, c 337, §16; am L 1988, c 104, §2; am L 2005, c 196, §26(b); am L 2006, c 180, §16]

" **§516-172 Loans; sale, pledge, or assignment.** (a) Subject to any agreement with the holders of its revenue bonds, the corporation may sell its loans at public or private sale at a price and upon terms and conditions as it determines.

(b) Subject to any agreement with the holders of its revenue bonds, the corporation may pledge or assign its loans, other agreements, notes, or property to secure the loans or agreements. [L 1983, c 270, pt of §1; am L 1987, c 337, §16; am L 1988, c 104, §2; am L 2005, c 196, §26(b); am L 2006, c 180, §16]

" **§516-173 Loans; insurance and guarantees.** The corporation may procure insurance or guarantees against any default of its loans, in amounts and from insurers or guarantors, as it deems necessary or desirable. [L 1983, c 270, pt of §1; am L 1987, c 337, §16; am L 1988, c 104, §2; am L 2005, c 196, §26(b); am L 2006, c 180, §16]

" **§516-174 Loans; default.** The corporation may:

- (1) Renegotiate, refinance, or foreclose any loan in default;
- (2) Waive any default or consent to the modification of the terms of any loan or security agreement;
- (3) Commence any action to protect or enforce any right conferred upon it by any law, mortgage, insurance policy, contract, or other agreement;
- (4) Bid for and purchase the property secured by the loan at any foreclosure or other sale, or acquire or take possession of the property secured by the loan; and
- (5) Operate, manage, lease, dispose of, or otherwise deal with the property secured by the loan. [L 1983, c 270,

pt of §1; am L 1987, c 337, §16; am L 1988, c 104, §2;
am L 2005, c 196, §26(b); am L 2006, c 180, §16]

" **§516-181 Interest acquired.** (a) Upon acquisition of the leased fee interest in a residential houselot from the proceeds of an eligible loan, the property interest acquired shall be all of the right, title, and interest of the fee owner and all legal and equitable owners, if any, in and to the residential houselot acquired, subject to all covenants, conditions, easements, reservations, and restrictions of record running with the land or contained in the agreement of sale, deed, or other conveyance held by the fee owner and legal and equitable owners. The acquisition of a leased fee interest in a residential houselot from the proceeds of an eligible loan shall terminate all the right, title, and interest of the fee owner and all legal and equitable owners, whether the interest be a remainder, vested or contingent, a reversion, or other beneficial interest in the property, present or prospective.

(b) If the leasehold on property acquired from the proceeds of an eligible loan is subject to any mortgage, lien, or encumbrance suffered or permitted by the eligible borrower, including, but not limited to, rights arising through divorce, marriage, or assignment, the purchase of the leased fee interest in such residential houselot in no manner shall affect or impair the mortgage, lien, or encumbrance or the security afforded thereby to the holder thereof, and the leasehold shall continue, notwithstanding the purchase of the leased fee interest in such residential houselot by the eligible borrower, for the purposes and to the extent necessary to avoid any impairment of leasehold security, unless the holder of the mortgage, lien, or encumbrance on such leasehold and the corporation in writing shall consent to the transfer thereof to the fee. Upon the written consent by the holder thereof and the corporation, each such mortgage, lien, or encumbrance to which the leasehold is subject and to which such consent refers shall be transferred to and shall bind the fee acquired by the eligible borrower, and thereafter shall continue in full force and effect as a mortgage, lien, or encumbrance of the fee acquired by the eligible borrower, in the same order and priority among such mortgages, liens, and encumbrances so transferred to the fee as the same applied to and bound the eligible borrower's immediate, previous leased fee interest. [L 1983, c 270, pt of §1; am L 1987, c 337, §16; am L 1988, c 104, §2; am L 2005, c 196, §26(b); am L 2006, c 180, §16]

" **§516-182 Restrictions on sale and use of residential lots acquired from proceeds of eligible loan.** No interest in

property acquired from the proceeds of an eligible loan made under this part, so long as any part of such eligible loan is outstanding, shall be transferred unless contemporaneously with such transfer all interest in onsite improvements situated on such property are transferred to the same transferee. [L 1983, c 270, pt of §1]

" **§516-186 Construction.** The powers conferred by this part shall be in addition and supplemental to the powers conferred by any other law. The fee title acquisition loan programs authorized under this part may be undertaken, and revenue bonds may be issued under this part, notwithstanding that any other law may provide for a loan program similar to that authorized under this part, and may be undertaken for the issuance of bonds for like purposes, and without regard to the requirements, restrictions, limitations, or other provisions contained in any other law. Insofar as the provisions of this part are inconsistent with the provisions of any other law, this part shall be controlling. [L 1983, c 270, pt of §1]

"[PART VI. SUSTAINABLE AFFORDABLE
DEVELOPMENTS OR LEASES]"

[§516-201] 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. [L 2005, c 197, pt of §2]

" **[§516-202] Certification.** The lessor of a sustainable affordable development shall certify the lessor's qualification for the exemption established in section 516-201 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. [L 2005, c 197, pt of §2]

" **[\$516-203] 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. [L 2005, c 197, pt of §2]

" **[\$516-204] 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. [L 2005, c 197, pt of §2]