

**"CHAPTER 516D
RESIDENTIAL LEASEHOLD CONDOMINIUMS AND COOPERATIVES**

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Section

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

"PART I. GENERAL PROVISIONS

§516D-1 Applicability. This chapter applies to all lands on which are situated either residential condominium property regimes created under chapter 514A or 514B, or cooperative housing corporations, which are owned or held privately or by the State or by the counties, except Hawaiian home lands subject to article XII of the state constitution and lands owned or held by the federal government. [L 1989, c 168, pt of §4; ree L 1990, c 277, pt of §1; am L 2004, c 164, §23; am L 2008, c 28, §17]

"PART II. RIGHTS OF LESSEES

Cross References

Sale of leased fee interest in condominiums and cooperatives to individual lessees, see §514C-6.5.

§516D-11 Residential lease; disclosure. (a) Except as otherwise provided in this section, for any sale of a condominium or a cooperative residential leasehold apartment or unit, no later than ten calendar days after the acceptance of the deposit, receipt, offer, and acceptance contract (DROA) or other similar contract, the seller, either directly or through the seller's agent, shall provide to the buyer for the buyer's approval and acceptance one of the following lease documents which provide the major provisions of the lease, such as the length of the lease, lease rent terms, lease rent renegotiation dates, how renegotiated lease rents will be calculated, and surrender clause provisions:

- (1) Master lease and any amendments thereto;
- (2) Apartment or unit lease and any amendments thereto; or
- (3) For initial buyers of condominium apartments or units only, an unexpired preliminary, final or supplemental condominium property regime public report.

A sale for the purposes of this subsection shall not be deemed to include any transfer to a co-owner, or to a spouse, parent, or child of the seller, or to any transfer 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 applicable lease document, 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, on resale of the unit, shall acknowledge receipt of the lease documents specified in 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;
- (3) A statement that there are currently no statutory provisions for the mandatory conversion of leasehold condominiums and cooperatives, and that there are no assurances that such measures will be enacted in the future; and
- (4) 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 the 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, pt of §4; ree L 1990, c 277, pt of §1; am L 1991, c 276, §6; am L 2008, c 28, §37]

" **[§516D-11.5] Civil penalty.** Failure to furnish disclosures substantially complying with the requirements of section 516D-11 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, §7]

" **[§516D-11.6] Suggested form of a standardized summary of lease provisions.** A standardized summary of lease provisions executed pursuant to section 516D-11 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"), for the
sale of the property at _____,
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 the original developer of this project may have entered into a master ground lease with the fee simple owner of the land in order to develop the project. The developer or the cooperative corporation may then have entered into a sublease or a new lease of the land with the lessee (apartment owner). The developer may lease the improvements to the apartment owner by way of an apartment lease or sublease, or sell the improvements to the apartment owners by way of a condominium conveyance or apartment deed.

I understand that there are currently no statutory provisions for the mandatory conversion of leasehold condominium and cooperatives, and that there are not assurances that such measures will be enacted in the future.

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.

Buyer's signature

Buyer's signature

Date: _____, ____AM/PM

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

Buyer's signature

Buyer's signature

Date: _____, ____AM/PM

[L 1991, c 276, §8]

Revision Note

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

" [§516D-12] Mandatory arbitration of rent renegotiation.

(a) Every residential lease shall contain a provision for the mandatory arbitration of any rent renegotiation reopening.

(b) In the event that a residential lease does not contain a mandatory arbitration provision, the following arbitration procedure shall apply:

- (1) Rent shall be determined by three impartial arbitrators, who shall be recognized real estate appraisers;
- (2) Each party shall select an arbitrator, both of whom shall select the third arbitrator;
- (3) The three arbitrators shall determine the rent renegotiation which shall be final, conclusive, and binding on both parties; and
- (4) Lessor and lessee shall each pay one-half of all proper costs and expenses other than attorneys' fees.
[L 1989, c 168, pt of §4; ree L 1990, c 277, pt of §1]

Cross References

Other arbitration procedures, see §§519-2, 3.