

**"CHAPTER 519
REAL PROPERTY LEASES**

Section

- 519-1 Lease renegotiations; calculation of rent; definition
- 519-2 Residential leases of real property
- 519-3 Leases of real property by a cooperative
housing corporation
- 519-4 Exemption for sustainable affordable developments

Note

Chapter heading amended by L 1975, c 185, §2(1).

Leases of commercial and industrial property (repealed June 30, 2010). L 2009, c 189.

Cross References

Mandatory arbitration for condominiums and cooperatives, see §516D-12.

Right of first refusal for purchase of leased fee interest in condominiums and cooperatives, see chapter 514C.

Civil relief for state military forces, see chapter 657D.

Case Notes

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

" **[§519-1] Lease renegotiations; calculation of rent; definition.** (a) Whenever any agreement or document for the lease of private lands provides for the renegotiation of the rental amount or other recompense during the term of the lease and such renegotiated rental amount or other recompense is based, according to the terms of the lease, in whole or in part upon the fair market value of the land, or the value of the land as determined by its highest and best use, or words of similar import, such value, for the purposes of determining the amount of rental or other recompense, shall be calculated upon the use to which the land is restricted by the lease document.

(b) The term "lease", "lease agreement", or "document" as used in this section, means a conveyance leasing privately-owned land by a fee simple owner as lessor, or by a lessee as sublessor, to any person, for a term exceeding five years, in consideration of a return of rent or other recompense. [L 1969, c 267, §1]

" **§519-2 Residential leases of real property.** (a) All leases as defined by section 516-1, of residential lots, as defined by section 516-1, existing on June 2, 1975, or entered into thereafter, which provide for reopening of the contract for renegotiation of lease rent terms shall in the case of leases after June 2, 1975, provide the following, or in case of leases existing on June 2, 1975, shall be construed in conformity with the following:

- (1) Such renegotiations shall not be scheduled more frequently than once every fifteen years, provided the

first of such reopenings shall not be scheduled prior to the fifteenth year following the initial date of the lease; and

- (2) Upon renegotiation, the lease rent payable shall not exceed the amount derived by multiplying the "owner's basis" by four per cent. For purposes of this section, "owner's basis" means the current fair market value of the lot, excluding onsite improvements, valued as if the fee title were unencumbered; less the lessee's share, if any, of the current replacement cost of providing existing offsite improvements attributable to the land, which replacement cost shall include an overhead and profit not exceeding twenty per cent of the current replacement cost of the existing offsite improvements, or less the original lot development credit to the lessee, whichever is greater. For purposes of this section, "offsite improvements" means all physical improvements such as, but not limited to, roads, sewer lines, sewage treatment plants, and underground utility cables, constructed or placed in a subdivision or development off the land intended for occupancy, which improvements are to be used in common by occupants of all lands adjoining such improvements or by occupants of all lands for whose benefit the improvements have been constructed or placed; and "onsite improvements" means all physical improvements placed on a residential lot intended for occupancy which improvements are for the benefit of occupants of that lot, including but not limited to, dwelling units, garages, service buildings, stairs, walkways, driveways, walls, trees, shrubs, landscaping, and pools.

(b) In the event the parties to a lease are unable to achieve an agreement under any reopening provision, the Hawaii housing finance and development corporation or its designee shall arbitrate, and its findings shall be binding and conclusive on both parties. Arbitration proceedings under this subsection will be subject to the following requirements:

- (1) An advance deposit, which amount shall be determined by the corporation, equal to projected expenses and fees of the corporation or its designee for arbitration proceedings shall be required and shall be paid equally by lessees and lessors. All additional expenses and fees incurred by the corporation or its designee while acting as the arbitrator shall be borne equally by lessees and lessors. These additional

expenses and fees shall be subject to monthly billings or other arrangements which may be specified by contract. If more than one lessee is involved in an arbitration proceeding, all lessees shall share equally in one-half of the arbitration costs. The same division of costs shall apply if more than one lessor is involved in a proceeding.

- (2) Failure on the part of lessees to comply with the provisions set forth in this subsection, including failure to make advance deposits or payments, shall result in forfeiture of any rights or remedies under this chapter for arbitration, and the lessees' sole rights and remedies shall be as provided in the lease document.
- (3) If lessors fail to comply with the provisions of this subsection, including failure to make advance deposits or payments, then arbitration proceedings under this chapter will cease and the lease rent shall be set at the most recent fixed lease rent. Upon compliance with the provisions of this chapter, the arbitration may proceed, with the determination of the new lease rent effective only from the date of compliance by the lessor.
- (4) Except as provided in paragraphs (b)(2) and (b)(3) above, all new lease rents shall be effective as of the date of reopening.

For the purpose of this subsection, "arbitration proceedings" means the actual arbitration conducted by the corporation or its designee pursuant to a contract executed by and among the lessees, lessor, and the arbitrator detailing among other things, the following: description of properties involved, time of performance, compensation, method of payment, settlement and other procedures, and termination.

(c) Any covenant or provision of a lease in violation of this section, shall not be enforceable in any court in this State.

(d) For the purpose of this section renegotiation shall not include negotiation for the determination of lease rental under section 516-66 arising out of an extension under section 516-65. [L 1975, c 185, §2(2); am L 1976, c 242, §5; am L 1979, c 105, §49; am L 1984, c 191, §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 "516-1" substituted for "516-1(5)" and "516-1(11)".

Attorney General Opinions

Advance deposits cannot be used for processing arbitration applications. Att. Gen. Op. 85-19.

Hawaii Legal Reporter Citations

Declared constitutional. 78-1 HLR 78-59.

" **§519-3 Leases of real property by a cooperative housing corporation.** (a) All leases, including subleases executed by a cooperative housing corporation as lessee, and all leases, including subleases acquired by a cooperative housing corporation by assignment, whether executed prior to or after June 12, 1982, which directly or by incorporation provide for reopening of the contract for renegotiation of lease rent terms, shall provide or be construed in conformity with the following:

- (1) Such renegotiations shall not be scheduled more frequently than once every ten years; provided that the first of such reopenings shall not be scheduled prior to the fifteenth year following the initial date of the lease; and
- (2) Upon renegotiation, the lease rent payable by a cooperative housing corporation as lessee, sublessee, or assignee shall not exceed the amount derived by multiplying the "owner's basis" by the original percentage rate.

(b) In the event the parties to a lease are unable to achieve an agreement under any reopening provision, the Hawaii housing finance and development corporation or its designee shall arbitrate, and its findings shall be binding and conclusive on both parties. Arbitration proceedings under this subsection will be subject to the following requirements:

- (1) An advance deposit, which amount shall be determined by the corporation, equal to projected expenses and fees of the corporation or its designee for arbitration proceedings shall be required and shall be paid equally by lessees and lessors. All additional expenses and fees incurred by the corporation or its designee while acting as the arbitrator shall be borne equally by lessees and lessors. These additional expenses and fees shall be subject to monthly billings or other arrangements which may be specified by contract. If more than one lessee is involved in an arbitration proceeding, all lessees shall share equally in one-half of the arbitration costs. The

same division of costs shall apply if more than one lessor is involved in a proceeding.

- (2) Failure on the part of lessees to comply with the provisions of this subsection, including failure to make advance deposits or payments, shall result in forfeiture of any rights or remedies under this chapter for arbitration, and the lessees' sole rights and remedies shall be as provided in the lease document.
- (3) If lessors fail to comply with the provisions set forth in this subsection, including failure to make advance deposits or payments, then arbitration proceedings under this chapter will cease and lease rent shall be set at the most recent fixed lease rent. Upon compliance with the provisions set forth in this chapter, the arbitration may proceed, with the determination of the new lease rent effective only from the date of compliance by the lessor.
- (4) Except as set forth in paragraphs (b)(2) and (b)(3) above, all new lease rents shall be effective as of the date of reopening.

For the purpose of this subsection, "arbitration proceedings" means the actual arbitration conducted by the corporation or its designee pursuant to a contract executed by and among the lessees, lessor, and the arbitrator detailing among other things, the following: description of properties involved, time of performance, compensation, method of payment, settlement and other procedures, and termination.

(c) Any covenant or provision of a lease in violation of this section shall not be enforceable in any court in this State.

(d) For purposes of this section:

- (1) "Cooperative housing corporation" means a corporation:
 - (A) Having one and only one class of stock outstanding;
 - (B) Each of the stockholders of which is entitled solely by reason of the shareholder's ownership of stock in the corporation, to occupy for dwelling purposes the dwelling unit in a building, owned or leased by the corporation, and situated on land leased by the corporation;
 - (C) No stockholder of which is entitled (either conditionally or unconditionally) to receive any distribution not out of earnings and profits of the corporation except in a complete or partial liquidation of the corporation; and

- (D) Eighty per cent or more of the gross income for the taxable year in which the taxes and interest described in 26 United States Code section 216(a) are paid or incurred is derived from tenant stockholders.
- (2) "Offsite improvements" means all physical improvements such as, but not limited to, roads, sewer lines, sewage treatment plants, and underground utility cables, constructed or placed in a subdivision or development off the land intended for occupancy, which improvements are to be used in common by occupants of all lands adjoining such improvements or by occupants of all lands for whose benefit the improvements have been constructed or placed.
- (3) "Onsite improvements" means all physical improvements placed on a residential lot intended for occupancy which improvements are for the benefit of occupants of that lot, including, but not limited to, dwelling units, garages, service buildings, stairs, walkways, driveways, walls, trees, shrubs, landscaping, and pools.
- (4) "Owner's basis" means the value of the lessor's leased fee interest in the property that would apply if such interest 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 any method which is normally used by qualified appraisers in establishing the fair market value of a lessor's leased fee interest in land.
- (5) "Original percentage rate" means the percentage derived by dividing the annual lease rent established for the first fixed rent period under the lease by the fair market value of the land as of the first day of the first fixed rent period. [L 1982, c 220, §1; am L 1983, c 166, §2; am L 1984, c 47, §1 and c 191, §2; 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]

Attorney General Opinions

Advance deposits cannot be used for processing arbitration applications. Att. Gen. Op. 85-19.

Case Notes

Section does not provide for case where lessee's agent for lease rent renegotiations is a cooperative housing corporation. 74 H. 210, 847 P.2d 652.

" **[\$519-4] Exemption for sustainable affordable developments.** Notwithstanding any other law to the contrary, no lessee under a sustainable affordable lease as defined in section 516-1 and qualified under section 516-202 may exercise the rights granted to a lessee under section 519-2. [L 2005, c 197, §4]