

ACT 298

S.B. NO. 3146

A Bill for an Act Relating to Property.

Be It Enacted by the Legislature of the State of Hawaii:

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

**“CHAPTER
RIGHT OF FIRST REFUSAL FOR
CONDOMINIUMS AND COOPERATIVE HOUSING
CORPORATIONS**

§ **-1 Definitions.** For purposes of this chapter unless the context indicates otherwise:

“Condominium” means the ownership of single units, with common elements, located on property within the horizontal property regime.

“Condominium unit lessee” means an individual or individuals owning or leasing a condominium unit situated on leasehold land.

“Condominium project” means a real estate condominium project; a plan or project whereby a condominium of two or more units located within the horizontal property regime have been sold or leased or are offered or proposed to be offered for sale or lease.

“Cooperative housing corporation” means a corporation having one and only one class of stock outstanding; 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; and 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.

“Cooperative project” means a real estate cooperative housing corporation project; a plan or project whereby two or more apartments located in a building owned by a cooperative housing corporation have been leased or are offered or proposed to be offered to be leased.

“Cooperative unit lessee” means a shareholder of a cooperative housing corporation having a cooperative project located on leasehold land.

“Lessor” means the owner of the fee simple title to land which is leased to condominium lessees or a cooperative housing corporation, 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.

§ **-2 Right of first refusal.** When the leased fee interest in land under a condominium project or cooperative project or any part thereof is to be sold to any party other than the association of owners or the cooperative housing corporation, the seller shall first provide the board of directors of the association of owners or the cooperative housing corporation with written notice delivered or mailed by registered or certified mail, return receipt requested, postage prepaid, to any two of the president, vice-president, or managing agent (if any), of its intent to sell that interest, together with a complete and correct copy of the purchaser’s written offer, which offer shall contain the full and complete terms thereof. The association of apartment owners or cooperative housing corporation shall have a right of first refusal to purchase that leased fee interest for the same price as is contained in the written purchase offer.

§ **-3 Improvements.** The right of first refusal to purchase the leased fee interest in land created by this chapter shall be deemed to include the right to purchase the interest of the seller in any and all improvements on such land, other than the leasehold interest in any unit as to which the seller is the holder of the leasehold interest.

§ **-4 Compliance with procedures not required when.** Nothing in this chapter shall prohibit any lessor and association of condominium owners or co-

operative housing corporation from agreeing to the sale and purchase of the leased fee interest or any part thereof.

§ -5 **Offer to other prospective purchasers; time limit.** No lessor shall offer to sell the leased fee interest in any land under a condominium project or cooperative project or any part thereof to any party other than the association of owners or cooperative housing corporation for that project until a right of first refusal for the purchase of that interest has been offered as required by this chapter and has been rejected in writing by the board of directors; provided that an offer made pursuant to sections -2 and -3 shall be deemed to be rejected if not accepted in writing by the board of directors of the condominium project or the cooperative housing corporation within one hundred twenty days of its receipt of the written notice from the seller, as evidenced by the return receipts, or if the sale, through no fault of the seller, has not closed upon the purchase of one hundred per cent of the interest being sold within one hundred eighty days of receipt by the board of directors of such written notice, as evidenced by the return receipts. In the event that closing is delayed due to any fault of the seller, the deadline for closing shall be extended for a period of time equal to the delay caused by seller.

§ -6 **Powers of association of apartment owners and cooperative housing corporation.** (a) The association of apartment owners or cooperative housing corporation may purchase the leased fee interest in the land; provided that at least seventy-five per cent of the condominium unit lessees or cooperative unit lessees approve of the purchase. If the seller is also a condominium unit lessee or cooperative unit lessee, the seller's interest shall be disregarded in the computation to achieve the seventy-five per cent requirement. As used herein, seventy-five per cent of the condominium unit lessees means the lessees of units to which seventy-five per cent of the common interests are appurtenant and seventy-five per cent of the cooperative unit lessees means shareholders having at least seventy-five per cent of the shares in the cooperative housing corporation.

If the association of apartment owners or cooperative housing corporation accepts the seller's offer to purchase the leased fee interest in the land, the following powers, in addition to any other powers, shall be conferred upon the association of owners or cooperative housing corporation:

- (1) To purchase or otherwise acquire, own, improve, use, and otherwise deal in and with the leased fee interest to the land or any or all undivided interests therein;
- (2) To incur liabilities, borrow money, and secure any of its obligations by mortgage or pledge of all or any portion of its property, assessments, and funds;
- (3) To assess, in a fair and equitable manner, the condominium unit lessees or cooperative unit lessees for the expenses incurred in acquiring the leased fee interest to the land, or to service any debt associated therewith; and
- (4) To sell the leased fee interest appurtenant to a condominium unit to any condominium unit lessee or subsequent purchaser of such unit.

(b) No conveyance of the leased fee interest to or by an association of owners or cooperative housing corporation, and no borrowing, mortgage, or pledge by an association of owners or cooperative housing corporation shall be invalid because it was without capacity or power to do such an act or to make or receive such conveyance, transfer, or loan.

(c) No condominium lessee shall be compelled to participate in the purchase of the leased fee interest of the property, but may instead pay lease rent to the association of owners.

§ -7 **Violations; voidable sale.** Any sale made that violates this chapter shall be voidable at the option of the association of owners or the cooperative housing corporation. If any sale is so voided, the association of owners or cooperative housing corporation shall then have the right to buy the interest which had been conveyed by virtue of such sale for the same price as pertained to the sale so voided, subject to the time restrictions contained in section -5.

§ -8 **Exception.** This chapter shall not apply if the land under the condominium project or cooperative housing corporation subject to a leased fee interest is part of a larger tract of land and the lessor will not agree to sell the leased fee interest in the land in parts.”

SECTION 2. This Act shall take effect upon its approval but shall not affect any sale to an association of owners or cooperative housing corporation as to which a binding contract existed prior to such effective date.

(Approved June 13, 1988.)