

1 an owner willing but not obliged to sell it, taking into
2 consideration the highest and best use of the land.

3 "Highest and best use" means the most profitable, probable,
4 and legal use to which the land can be put.

5 "Lessee" means the lessee under a commercial real property
6 lease and the successors in interest of the lessee.

7 "Lessor" means the owner of the fee simple title to
8 commercial real property which is leased to a lessee.

9 § -2 **Option to purchase.** Notwithstanding any other law
10 to the contrary, any commercial property that is leased after
11 January 1, 2016, for a term (including any periods for which the
12 lease may be extended or renewed at the option of the lessee) in
13 excess of fifteen years shall be purchasable in fee simple by
14 the lessee, at the lessee's option, in the manner provided in
15 this chapter, at any time after the expiration of five years
16 from the date of the lease or assignment of lease up to the date
17 of expiration thereof, provided that the lessee has occupied the
18 premises for at least the five years preceding the exercise of
19 the option, and is not in default under the lease.

20 § -3 **Improvements.** The option to purchase and right of
21 first refusal to purchase the leased fee interest in commercial



1 real property created by this chapter shall be deemed to include
2 the right to purchase the interest of the seller in any
3 improvements on the commercial real property other than the
4 leasehold interest in any improvements for which the seller is
5 the holder of the leasehold interest.

6 § -4 **Violations; voidable sale.** Any sale made that
7 violates this chapter shall be voidable at the option of the
8 lessee. If any sale is so voided, the lessee shall then have
9 the right to buy the interest that had been conveyed by virtue
10 of the sale for the same price as pertained to the sale so
11 voided.

12 § -5 **Exclusion.** This chapter shall not apply to
13 Hawaiian home lands within the provisions of article XII of the
14 Constitution of the State of Hawaii, as amended.

15 § -6 **Effect of purchase.** (a) The effect of purchase
16 under this chapter shall be to vest in the lessee all the right,
17 title, and interest of the lessor in and to the commercial real
18 property, subject to all covenants, conditions, easements,
19 reservations, and restrictions of record running with the land
20 or those contained in the lease that are not inconsistent with
21 this chapter, and shall terminate all the right, title, and



1 interest of the lessor, whether the interest be a remainder,
2 vested or contingent, a reversion or other beneficial interest
3 in the property, present or prospective, legal or equitable,
4 provided the lessor be given notice and compensated for the
5 respective interest as herein provided.

6 (b) If the leasehold is subject to any mortgage, lien, or
7 encumbrance suffered or permitted by the lessee herein,
8 including but not limited to rights arising through marriage,
9 divorce, or assignment, the same shall continue in full force
10 and effect and bind the fee acquired by the lessee in the same
11 order and priority as the same applied to and bound the lessee's
12 immediate previous leasehold interest.

13 § -7 **Exercise of option.** (a) A lessee desiring to
14 exercise the lessee's option to purchase after the lessee's
15 lease becomes redeemable as herein provided shall do so by
16 sending written notice of intent to exercise the option by
17 registered or certified mail, return receipt requested, postage
18 prepaid, to the lessor and to all other parties in interest or
19 record and those personally known to the lessee. The notice
20 shall identify the date and recording data of the lease, a short
21 description identifying the commercial real property, and the



1 amount of the purchase price offered by the lessee. Where any
2 party in interest is not known to the lessee either as to
3 identity or the nature of the party's interest or claim, or
4 cannot be found, or constitutes a class of persons too numerous
5 to notify individually, notice to the parties shall be given by
6 publication thereof at least three times in a newspaper of
7 general circulation in the city or county in which the
8 commercial real property is located.

9 (b) A lessee desiring to exercise the lessee's option to
10 purchase after the lessee's lease becomes redeemable as provided
11 in this chapter shall bear all costs associated with the
12 exercise of the option, including all costs incurred by the
13 lessor to evaluate, agree to, or oppose the lessee's notice of
14 intent to exercise the option.

15 (c) Upon mutual agreement of the price and other terms of
16 purchase and upon payment of the price by the lessee, the lessor
17 shall execute and deliver to the lessee a good and sufficient
18 deed, prepared at the expense of the lessee, conveying and
19 vesting in the lessee the fee simple title to the commercial
20 real property thereby purchased, and the lease theretofore
21 existing between the parties shall be fully redeemed and



1 terminated. All payments under the lease, including rents,
2 shall continue to be paid by the lessee after delivery of the
3 notice to the lessor up to the time of full payment of the
4 purchase price, and any proratable costs or charges arising out
5 of the purchase shall be prorated between the parties as of that
6 date.

7 § -8 **Purchase price.** The purchase price of the fee
8 interest subject to purchase by the lessee is the fair market
9 value of the fee interest determined as of the date of notice to
10 exercise option, undiminished by the value of any interests of
11 sublessors, developers, mortgages or lienholders of the fee
12 interest or of the landowner. The price determined shall be
13 allocated between and paid to the landowner, sublessors,
14 developers, mortgagees or lienholders or other claimants as
15 their respective interests may appear. The purchase price may
16 be determined by either mutual agreement, arbitration or court
17 proceeding as set forth in this chapter, but shall not be less
18 than the fair market value of the commercial real property as
19 determined by the department of taxation for real property tax
20 purposes as of the date of execution, renewal, or extension of
21 the lease sought to be redeemed.



1 § -9 **Developer's interest.** The interest in the purchase
2 price of a developer, sublessor, or other person entitled to
3 share in the lease rentals may be determined by agreement of
4 those entitled to share in the purchase price. In the absence
5 of an agreement, the interest of a developer, sublessor, or
6 other person entitled to share in the lease rentals shall equal
7 the person's total share in the lease rentals for the remainder
8 of the period during which the person would be entitled to share
9 in the lease rental, discounted to present day value at five per
10 cent per annum.

11 § -10 **Arbitration.** If the parties cannot agree as to
12 the purchase price within thirty days from the receipt by the
13 lessor of the notice to exercise option, the parties may proceed
14 to determine the purchase price by arbitration.

15 § -11 **Payment of purchase price.** Upon the determination
16 of the purchase price, the lessee, within five days of the
17 determination, shall pay to the lessor an earnest money deposit
18 equal to five per cent of the purchase price. After payment of
19 the deposit, the lessee shall be permitted up to ninety days in
20 which to pay the balance of the purchase price. Thereafter, any
21 failure by the lessee to complete the purchase by full payment



1 of the balance due shall, unless extended by the lessor or by
2 the court for good cause, constitute a breach of the lessor's
3 agreement to purchase and the lessor shall be entitled to retain
4 the deposited sum as liquidated damages. Until payment in full
5 is made by the lessee, the title shall not pass, rental payments
6 shall not abate, and the lease will be deemed to be in full
7 force and effect; provided that nothing in this chapter shall
8 preclude the parties from mutually agreeing to any other terms
9 regarding the method of payment, including but not limited to
10 the deferral of payments by or through means of purchase money
11 mortgages, agreements of sale, or other forms of secured
12 transactions.

13 § -12 Determination by court. (a) If:

- 14 (1) The lessor and lessee cannot agree on the purchase
15 price and do not submit the purchase price for
16 determination by arbitration within forty-five days
17 from the date of receipt of the notice to exercise
18 option;
- 19 (2) The lessor fails or refuses to execute and deliver a
20 deed of conveyance within fifteen days after agreement
21 is reached on all terms of the purchase and a tender



1 of full purchase price and demand for conveyance is
2 made by the lessee, or fails or refuses to execute the
3 instruments necessary to effect the purchase
4 agreement; or
5 (3) The lessor is a trustee without power of sale under a
6 will, deed, or other instrument for any trust, use, or
7 purpose, or is a life tenant with a remainder over,
8 vested or contingent, or is the holder of a defeasible
9 estate, but without power of sale in the trustee, life
10 tenant, or holder of a defeasible estate or is an
11 infant, ward, or incompetent, or any other
12 circumstances occur or exist as to the legal status of
13 the lessor or state of title of the commercial real
14 property under option, or a dispute exists between
15 lessors regarding the proper allocation of the
16 purchase price, which prolong, preclude, or prevent a
17 voluntary conveyance by the lessor of the subject
18 commercial real property,
19 then the lessor, lessee, or any party in interest may petition
20 the circuit court in the judicial circuit where the commercial
21 real property is situated for an order of conveyance, for



1 determination of fair market value, for specific performance, or
2 for any other relief as the circumstances require. Each
3 petition shall set forth the date and recording data of the
4 lease, the owner of the commercial real property and all
5 documents, claims, liens, and interests of record, the location
6 and description of the commercial real property, the notice and
7 date of exercise of the option to purchase, and any other facts
8 and circumstances as may be necessary to properly present the
9 matter to court for the relief sought. A copy of the petition
10 and summons shall be served upon the lessor and all parties in
11 interest of record or personally known to the lessee, either by
12 personal service or by publication, as the case may be, as
13 provided by law for civil cases generally, and as set forth in
14 the Hawaii rules of civil procedure.

15 (b) The court shall have power to hear and determine all
16 adverse or conflicting claims to the commercial real property
17 sought to be purchased and to the compensation or price to be
18 paid to the lessor and other parties in interest for conveying
19 and releasing their respective interests.

20 § -13 **Abandonment of suit.** Whenever any proceedings
21 instituted under this chapter are abandoned or discontinued by a



1 lessee before final judgment, or if for any cause the lessee
2 fails to complete the purchase upon the terms determined by the
3 court, the lessor shall be entitled in the proceedings to
4 recover from the lessee all damages as may have been sustained
5 by the lessor by reason of the bringing of the proceedings by
6 the lessee, including costs of court, reasonable attorney's fees
7 and other reasonable expenses incurred in connection with the
8 proceedings. Issues of fact arising in connection with any
9 claim for damages shall be tried by the court without a jury
10 within ten days from the date of the entry of an order or
11 judgment allowing the discontinuance of the proceedings,
12 dismissing the proceedings, or denying the right of the lessee
13 to the option. The court, at any stage in the proceedings, may
14 require the lessee to deposit with the court, as evidence of
15 good faith, a sum not to exceed \$5,000, which may be applied to
16 the purchase price, or in the event the lessee fails to complete
17 the purchase, may be applied to the damages as set forth in this
18 section.

19 § -14 No estoppel or waiver. No lessee qualified to
20 effect the purchase of the fee pursuant to this chapter shall be
21 estopped by any covenant, term, condition, or contract, however



1 worded, from claiming a right granted by this chapter or
2 otherwise be deemed to have waived that right. Any attempted
3 circumvention of this law with the intent to nullify this
4 section shall be void and the lessee shall retain all the rights
5 provided in this chapter.

6 § -15 **Involuntary conversion.** Notwithstanding the
7 repeated execution by a lessor of leases, or renewal or
8 extension of leases of commercial real property with knowledge
9 that the property may become subject to this chapter, the lessor
10 shall not be deemed a "dealer" in the sale of real property or
11 one holding real property primarily for sale to purchasers in
12 the ordinary course of trade or business. Further, any
13 conveyance of title by a lessor upon the exercise by the lessor
14 upon the lessee of the purchase option as provided in this
15 chapter shall be an involuntary conversion of the lessor's
16 interest in the property conveyed for the purpose of applicable
17 provisions of the Internal Revenue Code and Hawaii Revised
18 Statutes as well as any other statutes, rules, regulations,
19 administrative orders, and legal interpretations within the
20 federal and state governments relating to taxation.



1 § -16 **Authority for trustees and executors to lease**
2 pursuant to this chapter. Notwithstanding any limitations in
3 any instrument creating any estate or trust, and regardless of
4 whether an estate or trust was in effect prior to the effective
5 date of this chapter, that forbids or restrains the sale of real
6 property of the estate or trust, or that gives to any trustee or
7 trustees a discretionary power of sale, or that restricts or
8 denies the powers of trustees, executors, or officers of the
9 estate or trust to grant leases containing an option to
10 purchase, the trust, executors, or officers of the estate or
11 trust may enter into leases in excess of fifteen years and shall
12 convey the property subject to a lease upon the exercise of the
13 option by the lessee as provided in this chapter.

14 § -17 **State land.** Notwithstanding any other law to the
15 contrary, this chapter shall apply to leases of public land in
16 the same manner as to private land, subject to exclusions
17 provided in section -5.

18 § -18 **Assignments.** All leases subject to this chapter
19 shall be assignable by the lessee without approval or consent of
20 the lessor; provided that no assignment shall be effective to
21 transfer any interest in the lease unless the lessor is given a



1 true executed copy of such assignment or written notice
2 thereof."

3 SECTION 2. If any provision of this Act, or the
4 application thereof to any person or circumstance, is held
5 invalid, the invalidity does not affect other provisions or
6 applications of the Act that can be given effect without the
7 invalid provision or application, and to this end the provisions
8 of this Act are severable.

9 SECTION 3. This Act does not affect rights and duties that
10 matured, penalties that were incurred, and proceedings that were
11 begun before its effective date.

12 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY:

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JAN 20 2016



H.B. NO. 1635

Report Title:

Commercial Real Property; Leasehold; Lease to Fee Conversion

Description:

Provides that a lessee shall have the option to purchase commercial real property under certain conditions.

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