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Discovery Bay condo fee suit to be retried

The city stopped the sale though owners had signed contracts

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A federal appeals court is sending the city and a group of Discovery Bay condominium owners back to court over the city's repeal of its lease-to-fee law for condominiums.

When the city repealed the law in 2005, a group of 36 Discovery Bay condominium owners had already applied to take advantage of the law and had substantially completed the process. Each owner had signed a contract with the city, and they had all qualified to purchase the land under their units, which they are currently leasing.

But the process halted when the City Council refused to approve a resolution that would have initiated condemnation proceedings to acquire the land from Bank of Hawaii Trust, then sell it to the lessees. The Council also refused an amendment offered by Councilman Charles Djou that would have allowed the conversion process for lessees who had signed contracts with the city to continue.

The Discovery Bay residents sued to continue the process, but U.S. District Judge David Ezra dismissed their lawsuit. He said the city did not have to complete the lease-to-fee conversion for them because the contracts they signed with the city were not enforceable.

But the 9th U.S. Circuit Court of Appeals disagreed this week and overturned Ezra's ruling.

"It's a major victory, but we still have to go back to court. But we're very optimistic, obviously," said David Nakashima, lawyer for the Discovery Bay residents.

Deputy Corporation Counsel Don Kitaoka said the city is disappointed.

"As the case continues, we await further findings from the court," he said.

Nakashima believes some of the options Ezra can consider include forcing the city to follow through on the lease-to-fee conversion for the Discovery Bay lessees or awarding them monetary damages. He believes the difference in the value of the apartments under lease and the value of them under fee is in the millions of dollars.

Ralph Mitchell is among the 36 lessees who sued the city. He said he would rather have the opportunity to buy the fee interest in the land.

"No one's trying to make a fast buck here. No one has the intention of selling. We intend to, most of us, live our lives out there," he said.

Mitchell said he pays about \$90 dollars per month in lease payments for his eighth-floor, two-bedroom unit but expects his payments will go up substantially this year. He said the condominium's board of directors has just completed renegotiating the lease with the landowner but has yet to inform the rest of the condominium owners the terms of the new lease.

"We would've been fee simple by this time, easily," had the city allowed them to proceed with the conversion in 2004, Mitchell said.

His wife, Lucy, said had they known they would have problems trying to acquire the fee interest when they bought their unit 10 years ago, they would have considered buying somewhere else.