

# Lease Rent Renegotiation (§514B-151, Hawaii Revised Statutes)

By Michael Pang

In 2000, §514A-90.6, Hawaii Revised Statutes, was added to the condo statute which obligated an association of apartment owners (“AOAO”) to represent its leasehold members in lease rent renegotiation, even if the project was partially converted (some fee simple, and some leasehold apartments). The AOAO’s board was obligated to handle the renegotiation and assess the costs to its leasehold members

In 2007, the recodified condominium statute refined the AOAO’s requirements regarding representing their leasehold members in lease rent renegotiation. §514A-90.6, HRS, gave way to §514B-151, HRS. The AOAO’s Board is still obligated to represent its leasehold members, but the new law addresses some issues the old one didn’t. In general, for the three most

common situations:

## **UNCONVERTED PROJECTS (all leasehold apartments)**

The AOAO, via its Board of Directors (“Board”), is required by law to represent all its members collectively in the renegotiation (negotiation and/or arbitration) of the new lease rent and assess the costs to all of the apartment owners as a common expense in accordance with each apartment owner’s common interest.

## **PARTIALLY CONVERTED PROJECTS (both leasehold and fee simple apartments)**

The AOAO, via its Board, is required by law to represent its remaining leasehold members collectively in the renegotiation (negotiation and/or arbitration) of the new lease rent and to assess the costs only to the remaining

leasehold units (not the fee simple units) meaning units that are still leasehold on the “*earlier of any date specified in the lease or sublease for the commencement of lease rent negotiation or nine months prior to the renegotiation date*”.... “*in the same proportion that the common interest appurtenant to each lessee’s units bears to the common interest appurtenant to all remaining lessees’ units whose lease rent is to be renegotiated*” (we call that the “reapportioned common interest”). The only exception to this is if there is only one leasehold unit remaining; in that event, this statute does not apply.

## **AOAO IS THE FEE OWNER**

This situation occurs when an AOAO buys the entire leased-fee inter-

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est in bulk and still has remaining unsold leased-fee interests when a renegotiation date occurs. The AOA, via its Board, is still required by law to represent its remaining leasehold members collectively in the renegotiation (negotiation and/or arbitration) of the new lease rent even though it must also represent itself as the fee owner in the renegotiation.

The AOA must appoint (retain) a "Lessee Counsel," who must be an attorney, to represent the remaining lessees in the renegotiation. By doing so, the AOA fulfills its obligation to the lessees under the law. The AOA as the lessor can retain any representative it chooses; it does not have to be an attorney. Each side pays their own expenses, the lessees' cost are assessed based on reapportioned common interest.

Approval of the negotiated lease rent, or the decision to arbitrate it, is done "in accordance with the vote or written consent of a majority of the lessees casting ballots or submitting written consents" as determined by the reapportioned common interest. This means that non-voting lessees are bound by the decisions made by a majority of the voting lessees. In an extreme case, if only one lessee votes, that lessee can bind all of the remaining lessees to the new lease rent or to authorize arbitration.

Today, there are approximately 504 condo and co-op projects in Hawaii with leasehold units, 370 of them are partially converted and only 134 have had no fee conversion sales. Handling lease rent renegotiation, especially in the numerous partially-converted projects or one where the AOA is the lessor, is better defined but more complicated by §514B-151, HRS.

It is recommended that all boards seek professional advice in lease rent renegotiation matters and start work on it early, especially in cases where the project is partially converted due to the law's requirement to assess the remaining leasehold apartments nine months in advance of the renegotiation date.

For a copy of §514B-151, HRS, please visit our website at [www.mpi-hi.com](http://www.mpi-hi.com).

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