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# Gathering Places

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## Fee conversion allows for wiser investments

Residential leasehold was well intended to create more housing, but it was doomed to fail because the system used was misapplied from commercial leasehold concepts. The leases will inevitably displace residents from their homes. Predictably, this eventually placed social conscience (saving peoples homes) in conflict with the lease contract.

Government responded by compelling the sale of the leased fee, first for single-family homes (Chapter 516, Hawaii Revised Statutes) and then for condos, co-ops and planned unit developments or PUDs (Chapter 38, Revised Ordinances of Hawaii). Federal and state supreme courts have upheld the constitutionality and public purpose of both mandatory fee-conversion laws, essentially agreeing that we must get out of our antiquated residential leasehold system, if not voluntarily then involuntarily. We should not have to keep debating this point.

A recent court ruling determined that Chapter 38's qualification requirements were ambiguous and opined an interpretation that made the law as exclusive as possible. The apparent intent of this was to make the City Council clarify qualification so there is no ambiguity about it.

In reaction, the Council introduced Bill 53 to do this and return Chapter 38 to being as inclusive as possible, as was intended. Opponents of Bill 53 want to exclude as many as possible from using Chapter 38. But some of the rhetoric being used to fan the emotional flame of opposition is inaccurate.

Opponents say that selling reduces a lessor's income or "steals" it. But the economic fact is that selling at a fair price today should allow lessors to profit in reinvestment over all the income they can earn from the lease, plus the redevelopment value of the land at the end of it. This is why major trusts, trust companies and knowledgeable lessors have voluntarily sold their leased-fee investments.

A prime example is Kamehameha Schools. Not too long ago Kamehameha Schools was an asset-rich, cash-poor entity having some difficulty meeting operating costs. Today Kamehameha Schools is an international investment giant with the cash to expand programs and help many more of its beneficiaries. The difference is that Kamehameha Schools wisely enriched itself with voluntary fee-conversion sales.

Fee conversion is the best win-win resolution to the dilemma of our antiquated residential leasehold system. Lessors profit in reinvestment and lessees keep their homes.

Emotional attachment to the land is another reason given for opposing fee conversion. However, lessors committed their land for investment because it served a greater purpose to maximize the potential of the land through development. Now that the land is an investment vehicle, lessors should want to maximize it further by selling for greater income. This is especially true for trust-lessors who have beneficiaries to serve.

There are about 363 leasehold condo projects on Oahu with owner-occupant lessees (the only ones who can qualify for Chapter 38). If Bill 53 passes, then lessees in all 363 projects could qualify. If Bill 53 fails, then about 89 percent of these 363 leasehold projects could be ineligible. Passage of Bill 53 appears to hinge on City Council members sticking to the facts and supporting what our courts, social conscience and the public's best interests have dictated and not be confused or intimidated from the emotional rhetoric of opponents.

We should stop blaming each other and kokua to get out of a difficult situation. The error of our residential leasehold system appears to be shortsightedness by all involved -- those who created it, lessees and lessors. The error of a past generation will have to be fixed by this one. It will, if the facts and public good prevail.

Michael Pang is the president and principal broker of Monarch Properties Inc., which has represented or currently represents owners in more than 150 condo, co-op and PUD projects in fee conversion and lease rent renegotiation matters.