CHAPTER 34

LEASEHOLD CONVERSION

NEAL MILNER
Professor of Political Science
University of Hawai'i
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"How should the leasehold controversy be resolved?"

The controversy over leasehold land has heated up again, this time with respect to condominiums. County councils and the state legislature are working on solutions, but every piece of legislation will no doubt be tested in court. That's unfortunate, because litigation takes time. For example, over twenty years elapsed between the passage of the Land Reform Act of 1967 (the legislation setting in motion lease-to-fee conversions for single-family homes) and the U.S. Supreme Court decision that upheld its constitutionality. Four more years passed before mass conversions began. The slow pace of litigation would keep many anxious and frightened land and condo owners in limbo for a long time.

Litigation never produces a happy ending for everyone. In fact, it is quite possible to end up with a definitive, well-reasoned court opinion that satisfies no one. For example, a court might force landowners who do not want to sell to anyone to offer land for sale at prices that many condo owners cannot afford to pay. Plus, certain unappreciated facts about the leasehold controversy are likely to get lost completely in litigation. These features are terribly important and, once understood, may suggest other ways of dealing with the conflict.

1. The Bishop Estate and other landowners are more different than alike. It is politically useful for Bishop Estate to ride the coattails of the small landowner (like the Hanohano family mentioned in many estate-funded commercials), but the differences between the estate and all other landowners are vast. The Bishop Estate owns much more land than any of the others. It is a large, powerful organization with a clear mission. Other landowners are mostly families and small groups that are neither politically powerful nor as explicit in their goals.

None of these differences alone is very important. What makes them more significant is:

2. Unlike the Bishop Estate, small landowners do not want to sell their land. Time and again in their testimony before legislative bodies, small landowners have emphasized that their land is their legacy, not something they ever want to sell. As one put it, "My wise mother-in-law instilled in us 'buy land in fee simple. It cannot be lost, stolen, or taken away. This ownership of land is security for your children and for your children's children.'"

While the Bishop Estate's words do not distinguish it from the small landowners, its deeds certainly do. Its strategy over the past ten years has been to invest the bulk of its wealth outside Hawai'i. Selling out to lessees (i.e., condo owners) would allow the estate to continue that plan.

3. Condo leasehold raises moral, as well as legal and economic, issues. Home ownership occupies a special status in America. Owning a home signifies that you have paid your dues by scrimping, saving, struggling, and sacrificing in order to become someone who has "permanently" settled into the community. Financial security is part of this success, but so is the feeling that by owning a home you have done things right.

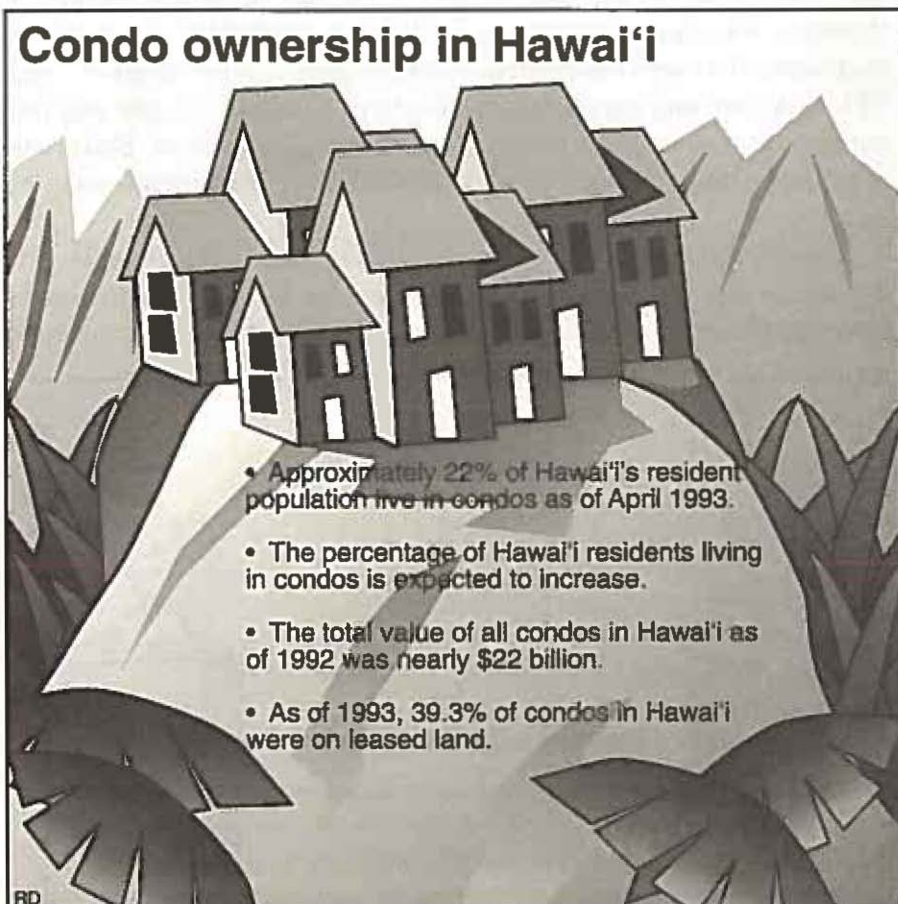
This theme has come up again and again in testimony about leasehold conversion. Condo owners talk of the sweat and sacrifice they have put into their homes. They have done everything expected of a homeowner and now they might lose it all. The landowners talk about the sacrifice, toil, and postponed gratification that went into the purchase and development of their land. People on both sides are especially angry and afraid because they see basic, cherished American values threatened.

4. Landowners differ from condo owners on racial and ethnic lines. Almost 90 percent of those testifying at O'ahu council hearings on behalf of the condo owners had Western (haole) surnames, while nearly two-thirds of the landowners had Asian, Hawaiian, or other

Pacific Island names. At leaseholder meetings I have attended, approximately 90 percent of the attendees and about the same number of active participants appeared to be Caucasian. The results of a 1987 survey support my casual observations and further note that the condo owners group included very few Hawaiians and Filipinos at that time. Presumably, that has not changed.

These sensitive and imprecise observations become more important when combined with:

5. Landowners typically brand condo owners as outsiders. Time and again the landowners distinguish themselves from the condo owners whom they think of as, and sometimes call, outsiders. Specifically, they have argued that condo owners do not have a sufficient stake

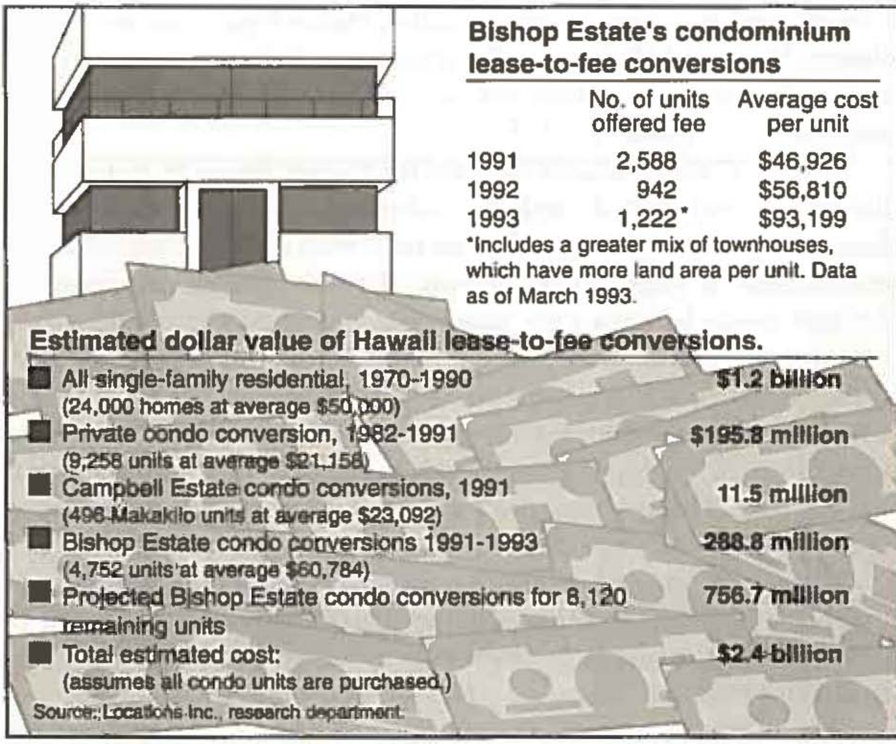


Source: Locations, Inc., research department.

in the community and are mainly interested in the profits they can make from real estate speculation. Landowners often introduce themselves with phrases like "I am one-eighth Hawaiian," "I am a third-generation American of Japanese ancestry," or "I am keiki o ka ʻāina." The condo owners never describe themselves in ethnic or racial terms.

6. There are important similarities between the small landowners and condo owners. The small landowners and the condo owners share a sense of victimhood. Both sides see themselves as victims of larger forces. Landowners feel exploited by increases in housing prices, far in excess of their expectations at the time they agreed to offer low lease rents. As a result, they feel victimized by condo owners who have made gigantic profits on condo sales. Condo owners who haven't sold out also feel victimized by the unanticipated run up in prices because it threatens their home ownership. Each feels vulnerable because things that used to be taken for granted—"my land will stay in my family" and, "if I work hard and save, I will be able to pay off my mortgage and live comfortably by the time I retire"—are now slipping away. Both have done everything they were supposed to do but see their dreams slipping away.

Again, the Bishop Estate is in a different situation. Given its size, mission, and political connections, it is much less vulnerable to outside forces and in fact has benefited tremendously from these unanticipated



Bishop Estate's condominium lease-to-fee conversions

	No. of units offered fee	Average cost per unit
1991	2,588	$46,926
1992	942	$56,810
1993	1,222*	$93,199

*Includes a greater mix of townhouses, which have more land area per unit. Data as of March 1993.

Estimated dollar value of Hawaii lease-to-fee conversions.

All single-family residential, 1970-1990 (24,000 homes at average $50,000)	$1.2 billion
Private condo conversion, 1982-1991 (9,258 units at average $21,158)	$195.8 million
Campbell Estate condo conversions, 1991 (496 Makakilo units at average $23,092)	11.5 million
Bishop Estate condo conversions 1991-1993 (4,752 units at average $60,784)	288.8 million
Projected Bishop Estate condo conversions for 8,120 remaining units	756.7 million
Total estimated cost: (assumes all condo units are purchased)	$2.4 billion

Source: Locations Inc., research department

changes. It is anything but a victim.

What it means. Facts 4 and 5 indicate that this conflict could broaden and become a nasty battle between "insiders" and "outsiders" precisely when, because of the likelihood of Hawaiian sovereignty, those of us living here can least afford that kind of conflict. The leasehold controversy has the potential to ignite a broader conflict over who belongs here. For all people in Hawai'i, sovereignty requires a sophisticated recognition that, on the one hand, some important benefits will be allocated on ethnic lines while, on the other, accommodating ourselves to one another will become an even more necessary goal than ever before. Certainly Ka Lāhui, the largest sovereignty organization, has been very clear in its emphasis on both exclusion and inclusion.

In the heat of battle it becomes tempting to avoid such subtlety. Condo owners who hear themselves labeled outsiders may see this labeling as part of a general sentiment to exclude them from Hawai'i.

One Bishop Estate trustee in particular, Henry Peters, has been more than willing publicly to consider opponents of the estate's policies as culturally insensitive outsiders who should leave if they do not like his sense of what Hawai'i is all about.

Facts 1, 2, and 6 indicate the need for a range of ways of dealing with leasehold issues. If small landowners do not wish to sell their land, and lessees do not wish to pay high lease rent, then these parties should be encouraged to work out some sort of profit-sharing arrangement. Perhaps in exchange for an acceptable lease rent the condo owner would share profits with the landowner when the condo was sold. Leases could be written to discourage speculation and to reward those who live in their condos for a long time. Such arrangements could be worked out through private negotiation, mediation, or arbitration. If the state legislature wants to get involved with this, it could develop processes that differ according to the size of the landowner.

The case of the Bishop Estate is the harder one which, for better or worse, may have to get resolved in the courts. But there are some other activities that might help, especially given the estate's recent announcement that it will make a blanket one-time offer.

There has never been any continuous, constructive contact between Bishop Estate and its lessees. There is a need for estate representatives and a small group of their lessees to meet regularly to discuss these issues in a calm manner. What I have in mind is what people who work in alternative dispute resolution call roundtables, where people with something at stake meet regularly to clarify differences and strive for consensus.

During its 1993 session, the state legislature asked the state's Center for Alternative Dispute Resolution to get involved with the condo leasehold issue. A roundtable would be a good place for the Center to begin.

Fact 3 reminds us in yet another way that this is not simply a leasehold controversy. The conflict is part of, and is aggravated by, the overall housing problem in this state. There is an insufficient supply of low and moderately priced homes, and rents are so high it's virtually impossible for most people to save and struggle enough—the things that good Americans are supposed to do—to achieve the American Dream.

Trouble in paradise for condo leaseholders

Most of the 43,572 condo owners on Oahu will have their lease rent renegotiated within the next 15 years and their ownership interests terminated during the next 45 years, if they don't buy the fee interest.

Renegotiation schedule of leasehold agreements

Years	Number of units	Percent of total units
Before 1996	2,050	4.7%
1996-2000	5,887	13.5%
2001-2005	8,983	20.6%
2006-2010	10,690	24.5%
After 2010	15,962	36.6%
Total	43,572	100%

Termination of leasehold agreements

Years	Number of units	Percent of total units
Thru 2010	306	0.7%
2011-2015	1,495	3.4%
2016-2020	1,175	2.7%
2021-2025	2,192	5.0%
2026-2030	6,435	14.8%
2031-2035	7,691	17.7%
2036-2040	8,251	18.9%
2041-2045	7,556	17.3%
2046-2050	4,278	9.8%
After 2050	4,193	9.6%
Total	43,572	100%

Source: Locations, Inc., research department.


AUWE. IS THIS LINE FOR ONE OF THOSE LOTTERIES FOR HOUSING?
NO. IT'S FOR AN INSURANCE COMPANY STILL WRITING NEW HOMEOWNERS' POLICIES.
CORKY