

HAWAII ADMINISTRATIVE RULES

TITLE 15

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT  
AND TOURISM

SUBTITLE 14

~~[HOUSING AND COMMUNITY DEVELOPMENT CORPORATION OF  
HAWAII]~~ HAWAII HOUSING FINANCE AND DEVELOPMENT  
CORPORATION

CHAPTER 304

REAL PROPERTY LEASE RENT RENEGOTIATIONS

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Historical note: Chapter 304 of Title 15, Hawaii Administrative Rules, is based substantially upon Chapter 381 of Title 6, Hawaii Administrative Rules, [Eff 9/25/90; R 10/25/99], Chapter 177 of Title 15, Hawaii Administrative Rules [Eff 10/25/99; R 10/25/04], and Chapter 2015 of Title 17, Hawaii Administrative Rules [Eff 10/25/99; R ]

## SUBCHAPTER 1

### GENERAL PROVISIONS

§15-304-1 Purpose and applicability. This chapter implements chapter 519, HRS, and applies to all residential leasehold lots and leases of real property by cooperative housing corporations as defined in chapter 519, HRS. [Eff ]  
(Auth: HRS §§91-2; 201H-4) (Imp: HRS §§519-2, 519-3)

§15-304-2 Definitions. Unless otherwise clear from the context or unless further defined in this chapter, the definition of "Lease," and "Lot," in section 516-1, and definitions in chapter 519, HRS, shall apply to this chapter. In addition, as used in this chapter:

"Advance deposit" means an amount determined by the corporation, which shall be paid in advance and is to be applied to expenses and fees of the corporation or its designee for arbitration proceedings.

"AAA" means the American Arbitration Association, a private, public service, not-for profit organization offering dispute settlement services in a variety of industries and businesses.

"Corporation" means the ~~[housing and community development corporation of Hawaii created under chapter 201G, Hawaii Revised Statutes.]~~ Hawaii housing finance and development corporation created under chapter 201H, Hawaii Revised Statutes.

"Executive Director" means the executive director of the corporation or the executive director's designated representative.

"Group of lessees" means more than one lessee having leasehold interests in separate residential lots within the same development tract or cooperative housing corporation.

"Group of lessors" means more than one lessor having fee ownership interest of residential lots in the same development tract or fee ownership interest in the land leased to a cooperative housing corporation.

"Party" means a lessee or group of lessees or a lessor or a group of lessors.

"Per diem rate" means the daily rate which may be paid to an arbitrator for professional services in conducting arbitration proceedings for renegotiation of lease rent cases. The arbitration proceedings include services such as, but are not limited to, prehearing conferences, hearings, study of the positions and presentations of the parties, providing meeting facilities, field inspections of real property site(s), typing, reproduction, and preparation of award. Not included as part of the per diem rate are costs associated with neighbor island travel (air and ground transportation and lodging where appropriate) plus costs of travel locally by automobile to points in excess of thirty minutes from an arbitrator's office. Engagement in the performance of any tasks of the arbitration proceedings process for a period of more than six hours in a single day qualifies for the full per diem rate and performance of those tasks in a single day totaling less than two hours qualifies for one-fourth of the per diem rate, two hours of more but less than four hours qualifies for one-half of the per diem rate, and four hours or more qualifies for three-fourths of the per diem rate.

"Renegotiations" means deliberations between a lessee and lessor for determining a new lease rent at the time the lease is reopened as provided in chapter 519. [Eff \_\_\_\_\_ ] (Auth: HRS §201H-4)  
(Imp: HRS §§519-1, 519-2, 519-3)

## SUBCHAPTER 2

### LEASE RENT RENEGOTIATIONS

§15-304-11 Qualifying requirements for arbitration of renegotiation of lease rent. All leases for residential leasehold lots and all leases, including subleases executed or acquired by assignment by cooperative housing corporations shall be eligible and considered qualified for arbitration if the criteria outlined in sections 519-2 or 519-3, HRS, are met. [Eff \_\_\_\_\_] (Auth: HRS §201H-4) (Imp: HRS §§519-2, 519-3)

§15-304-12 Request for arbitration. (a) When a lessee or group of lessees and a lessor or group of lessors cannot agree on a renegotiated lease rent and the lease meets the requirements for arbitration under chapter 519, HRS, either party may request the corporation to arbitrate the renegotiations of lease rent. The request for arbitration shall include the following:

- (1) Description of the property including its location and tax map key number;
- (2) Name, address, and business and home telephone numbers, as appropriate, of each party;
- (3) Name, address, and business and home telephone numbers, as appropriate, of the representative (if any) for each party;
- (4) Signature sheet with the signatures of the party initiating the request;
- (5) Copies of all current lease documents applicable to the requested action, and if applicable, copies of any assignment of lease; and
- (6) Negotiation documents and a narrative statement on the current status of

renegotiations including the last offers of the parties, if available.

(b) The party initiating the request for arbitration shall submit its portion of the advance deposit with the filing of the request for arbitration. The responding party shall pay its share of the advance deposit upon notification from the corporation that the lease meets the criteria for arbitration as outlined in sections 519-2 or 519-3, HRS. The advance deposit shall be in the form of a cashier's or certified check or money order in the following amounts:

- (1) \$1,200 per party participating in the arbitration proceedings for residential lots; or
- (2) \$1,200 per cooperative housing corporation and lessor participating in the arbitration proceedings.

(c) If the request for arbitration does not meet the criteria for arbitration, the initiating party shall be entitled to a refund of the advance deposit and the responding party will not be required to pay its portion of the advance deposit.

(d) If the request for arbitration meets the criteria for arbitration as outlined in sections 519-2 or 519-3, HRS, and if the parties have paid the advance deposit and the dispute is settled or withdrawn from arbitration before the contract for arbitration is executed among the parties and the arbitrator, or the contract is executed, but before arbitration proceedings commence, the full amount of each party's advance deposit shall be refunded.

(e) If the parties settle or withdraw their dispute from arbitration after the contract has been executed, but before the arbitration proceedings commence, the arbitrator shall be compensated with one-fourth of the per diem rate, the cost of which shall be shared equally by the parties. The payment shall be deducted from the advance deposits made by the parties. The balance of the deposits is to be refunded to the parties in equal amounts.

(f) If the parties settle or withdraw their dispute from arbitration any time after the arbitration proceedings commence and before the award is rendered, the arbitrator shall refund all of the unexpended portion of the advance deposit to the parties in equal amounts.

(g) Fees to cover the arbitration proceedings shall be set by the corporation at a per diem rate which shall be reviewed in conjunction with updating the master list of arbitrators to determine whether any adjustment in the rate amount is warranted.

(h) All projected expenses and fees of the arbitration proceedings shall be borne equally by each of the parties as prescribed in chapter 519, HRS, and this chapter.

(i) Failure by either party to pay their respective share of the advance deposit and costs of arbitration proceedings, as may be required, shall result in sanctions as set forth in chapter 519, HRS. [Eff ] (Auth: HRS §201H-4) (Imp: HRS §§519-2, 519-3)

§15-304-13 Review of application and determination of eligibility. (a) Not later than fifteen working days after receiving a request for arbitration, the administrator shall review the case to determine whether the lease for residential or cooperative housing corporation property satisfies the criteria outlined in sections 519-2 or 519-3, HRS, and this chapter, and the corporation shall notify each party of the corporation's determination.

(b) If the corporation finds that the lease does not meet the criteria for arbitration, the corporation shall take no further action.

(c) If the corporation determines that the lease does meet the criteria for arbitration, the corporation shall proceed to designate an arbitrator. [Eff ] (Auth: HRS §201H-4) (Imp: HRS §§519-2, 519-3)

§15-304-14 Selection and designation of an arbitrator and execution of contract. (a) The corporation may appoint an arbitrator from the corporation's staff or may appoint a designee from the private sector to arbitrate the renegotiation of lease rent terms.

(b) The corporation shall establish a master list of all persons responding to solicitations for qualification statements who meet the requirements for an arbitrator, as set forth in subsection (c) to arbitrate renegotiation of lease rent cases. Additionally, the corporation shall update its master list of qualified arbitrators each year or at any other time deemed necessary by the corporation.

(c) The requirements for a person to act as an arbitrator to arbitrate renegotiation of lease rent cases shall be as follows:

- (1) A real estate appraiser who is certified by the State of Hawaii, with a minimum of three years of experience; and
- (2) At least one of the following:
  - (A) Successful completion of training in arbitration rules and procedures (conducted or sanctioned by the American Arbitration Association;
  - (B) Admission to the panel of the American Arbitration Association; or
  - (C) Performance as an arbitrator in rendering a decision in at least three real property arbitration cases; or
- (3) A person mutually selected by both parties.

(d) If the corporation decides to designate an arbitrator from the private sector, the corporation shall furnish each party with an identical list of up to seven qualified arbitrators from the corporation's master list of qualified arbitrators, and each party shall have the right to peremptorily cross off one name. Each party shall then rank the remaining names on the list in the order of preference and shall return the list to the corporation within ten days from the date of the referral for further consideration. The corporation shall assume that each

party concurs in the selection of any named arbitrator remaining on their respective lists.

(e) The corporation shall review both lists to determine if there is a mutual choice by preference of the proposed arbitrators remaining on the lists. If there is a named arbitrator of mutual choice, that arbitrator shall be selected and appointed by the administrator.

(f) If for some reason, the preferred, mutual choice arbitrator is unable to accept the appointment, the corporation shall select and appoint the next mutually ranked arbitrator by preference. If there is no other mutually ranked choice by preference, the corporation shall make a selection and appointment from the remaining names on the list provided to the parties, and if for any reason an appointment cannot be made from those arbitrators remaining on the list provided to the parties, the corporation may appoint an arbitrator without the referral of an additional list of arbitrators to either party.

(g) Within ten calendar days after the selection and appointment of an arbitrator by the administrator, the corporation shall:

- (1) Notify each party and arbitrator; and
- (2) Request a written disclosure statement from the selected arbitrator.

(h) If, after review of the arbitrator's disclosure statement, the parties have no objections to the selection based on the disclosure statement, the corporation shall prepare and forward the arbitration services contract to each party and the arbitrator for execution. [Eff \_\_\_\_\_ ]

(Auth: HRS §201H-4) (Imp: HRS §§519-2, 519-3)

§15-304-15 Arbitration proceedings. (a) The arbitrator shall pursue the arbitration of the renegotiations in accordance with the arbitration services contract and chapter 658A, HRS.

(b) The arbitrator shall render an award, a copy of which the arbitrator shall send to each party and the corporation. The award shall be completed not



later than thirty days from the date of the last hearing.

(c) The corporation shall not participate in the arbitration proceedings where it has designated an arbitrator from the private sector to arbitrate the case, provided the corporation shall monitor the proceedings and may act as a resource in the arbitration. [Eff \_\_\_\_\_] (Auth: HRS §201H-4) (Imp: HRS §§519-2, 519-3; chapter 648)

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT  
AND TOURISM

The repeal of chapter 17-2015 and the adoption of chapter 15-304, Hawaii Administrative Rules, on the Summary Page dated \_\_\_\_\_, was adopted on \_\_\_\_\_, following a public hearing held on \_\_\_\_\_, after public notice was given in the Honolulu Star-Bulletin, The Garden Island, The Maui Times, West Hawaii Today, and Hawaii Herald-Tribune on \_\_\_\_\_.

The repeal and adoption shall take effect ten days after filing with the Office of the Lieutenant Governor.

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CHARLES KING, Chairperson  
Hawaii Housing Finance and  
Development Corporation

\_\_\_\_\_  
LILLIAN B. KOLLER, ESQ.  
Director of Human Services

APPROVED AS TO FORM:

\_\_\_\_\_  
Deputy Attorney General

\_\_\_\_\_  
LINDA LINGLE  
Governor  
State of Hawaii  
Date: \_\_\_\_\_

=====  
Filed  
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DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT  
AND TOURISM

Repeal of Chapter 17-2015 and  
Adoption of Chapter 15-304  
Hawaii Administrative Rules

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1. Chapter 17-2015, Hawaii Administrative Rules,  
is repealed.

2. Chapter 304 of Title 17, Hawaii  
Administrative Rules, entitled "Real Property Lease  
Rent Renegotiations" is adopted.