

CONDOMINIUM CONVERSIONS IN HAWAII

LAURA MOFFAT

Researcher

Report No. 2, 1982

Legislative Reference Bureau
State Capitol
Honolulu, Hawaii 96813

FOREWORD

This study of condominium conversions in Hawaii is presented by the Office of the Legislative Reference Bureau in response to House Resolution No. 26, H.D. 1, adopted by the Hawaii State House of Representatives during the 1981 regular session.

The report is divided into four major parts. Part I discusses the effects of condominium conversions in Hawaii by presenting data on Hawaii's conversion activity and its beneficial and detrimental effects. Part II focuses on existing legislation in Hawaii, if any, and elsewhere, which regulates condominium conversion activity. Part III presents an analysis of likely constitutional issues raised by laws regulating condominium conversions, and Part IV presents the Bureau's findings and recommendations.

We wish to express our sincere appreciation and gratitude to Mr. Steve Young, Chief of Planning Resources in the Department of General Planning, City and County of Honolulu; the Hawaii Visitors Bureau; Mr. Donald Bell, Associate Professor of Real Estate with the College of Business Administration at the University of Hawaii; Mr. Robert Schmitt, Chief of the Statistical Analysis Branch in the Research and Economic Analyst Division of the Department of Planning and Economic Development; Mr. George A. "Red" Morris of Hawaii TMK Service and Chairman of the Real Estate Commission; Ms. Kathleen Bryan, Chairwoman of the Consumers' Housing Task Force; and Mr. Arthur Asher, Statistician in the Economics Division of the Bank of Hawaii, for their help in providing information and assistance for this study.

Samuel B. K. Chang
Director

January 1982

TABLE OF CONTENTS

Chapter	Page
FOREWORD	iii
DEFINITIONS	1
 PART I. CONDOMINIUM CONVERSIONS AND THEIR EFFECTS IN HAWAII	
Limitations of Data (Excludes projects with 6 or less units)	3
1 DATA ON HAWAII'S CONDOMINIUM CONVERSION ACTIVITY	4
A. Converted Condominiums in Hawaii's Condominium Inventory and as Part of the Rental Housing Supply	4
B. Trend Towards Conversion of Smaller Projects	5
C. Increasing Rate of Conversion Activity on Oahu	6
D. Owner-Occupancy and Trend Towards Decreased Owner-Occupancy of Converted Units on Oahu	8
E. Short-Term Rental Availability of Condominiums and Converted Condominiums	10
F. Age of Converted Projects.....	10
 2 IMPORTANCE OF RENTAL HOUSING	 11
A. Majority of Population Rent.....	11
B. Lack of Affordable Homeownership Opportunities	11
C. Strong Rental Housing Demand by "Baby Boom" Generation	13
D. Increasing Rents and the Trend Away from Apartments to Condominiums	14
E. Decreasing Percentage of Public Housing.....	16

3	CONVERSIONS' DETRIMENTAL EFFECTS	17
A.	Depletion of Residential Rental Housing by Short-Term Rental and Owner-Occupancy on Oahu.....	17
B.	Probable Increased Rent After Conversion	18
C.	Displacement	19
4	BENEFITS OF CONVERSIONS	21
A.	Additions to Residential Rental Housing on Neighbor Islands.....	21
B.	Increased Real Property Tax Revenues to the Counties	21
C.	Additional and More Affordable Homeownership Opportunities	22
	SUMMARY OF PART I	25

PART II. CONDOMINIUM CONVERSION REGULATIONS

5	PROTECTION AFFORDED EXISTING TENANTS	29
A.	Time to Decide: Notice of Conversion and Eviction Requirements	29
B.	Right of First Refusal	30
C.	Relocation Assistance.....	31
D.	Right to Cancel Existing Leases.....	31
E.	Right to Quiet Enjoyment	32
F.	Right to Continued Occupancy, Lease Extensions, and Lease Renewals	33
G.	Minimum Tenant Purchase or Tenant Approval	33
6	RENTAL MARKET PROTECTION: REGULATING THE CONVERSION PROCESS	35
A.	Moratoria.....	35

Chapter	Page
B. Rental Vacancy Rate Minimum.....	35
C. Conversion Quota Limitations	36
D. New Rental Housing Construction Limitations.....	36
E. Discretionary Governmental Approval.....	36
7 PROTECTION OF LOW- AND MODERATE-INCOME HOUSING	37
A. Set-Aside Requirements	37
B. Replacement Requirements	37
8 PROTECTION FOR PURCHASERS	39
Hawaii	39
PART III. CONSTITUTIONALITY OF APPROACHES TO CONDOMINIUM CONVERSION REGULATION	
9 TAKING OF PRIVATE PROPERTY	43
10 EXERCISE OF POLICE POWER	45
11 PROCEDURAL DUE PROCESS	47
12 EQUAL PROTECTION	49
13 LOCAL GOVERNMENT REGULATIONS	51
14 MORATORIA.....	53
SUMMARY OF PART III	55

PART IV. SUMMARY OF FINDINGS AND RECOMMENDATIONS

15	SUMMARY OF FINDINGS.....	57
A.	Rental Vacancy Rate is a Good Indicator of a Rental Housing "Crisis".....	57
B.	Detrimental Consequences of Condominium Conversions.....	58
C.	Beneficial Consequences of Condominium Conversions	59
D.	Condominium Conversions Result in Both Furtherance and Hinderance of the State's Housing Policies	59
E.	Laws Regulating Condominium Conversions in Hawaii and Elsewhere.....	59
F.	Some Constitutional Requirements of Laws Regulating Condominium Conversions.....	60
16	RECOMMENDATION	61
A.	Protection of the Rental Market.....	61
B.	Tenant Protection.....	63
C.	Caveat on the Study and Areas for Further Study.....	64
	FOOTNOTES.....	67
	APPENDIX A	93

DEFINITIONS

As used in this study, unless otherwise indicated, the following terms have the following definitions:

- (1) "Apartment" or "apartment unit" means any dwelling unit attached to other units along the sides, floor, or ceiling, located within an apartment building, and available for rental occupancy;
- (2) "Apartment building" means one structure containing more than two dwelling units and more than one story in height, with units that are not individually owned as condominiums, but owned by one landlord who rents the apartment units to tenants. Townhouses, duplexes, single-family homes, and condominiums are excluded;
- (3) "Condominium" means an estate in real property consisting of an undivided interest in common in a portion of a parcel of real property together with a separate interest in space in a residential, industrial, or commercial building on such real property, such as a dwelling unit, office, or store. Single-family homes, duplexes, and townhouses may be held in a condominium form of ownership, wherein single dwelling units are individually owned, along with common elements located on the property;
- (4) "Conversion" or "condominium conversion" means a change in the legal form of ownership of one or more existing rental structures, such as apartment buildings or hotels, from single ownership by a landlord to multiple ownership of the individual condominium units. The change is made by filing a legal declaration and master deed with the Real Estate Commission. After the necessary approval is received, units in the condominium may be sold. For this study a project is considered "converted" as of the issue date of the Real Estate Commission's final public report under the Horizontal Property Regime Act. This issuance date of the final report is used as the criterion for determining when a project is converted because condominium unit sales contracts are not enforceable against the purchaser until the purchaser has had a full opportunity to read the Real Estate Commission's final public report on the project;
- (5) "Investor-owners" are condominium unit owners who buy for investment purposes, rather than for use of the unit as their residence, and who usually expect future appreciation on the unit. An investor-owned unit is typically retained as a rental;
- (6) "Long-term rental" means rental for a period of six months or longer;
- (7) "Project" means the entire parcel of real property divided, or to be divided into condominiums, including all structures thereon, and for

CONDOMINIUM CONVERSIONS IN HAWAII

which one public report number is assigned by the Real Estate Commission;

- (8) "Short-term rental" means rental for a period of less than six months;
- (9) "Unit" means, in the case of a condominium, the elements of a condominium which are not owned in common with the owners of other condominiums in the project. "Unit" means in cases other than condominiums, the individual dwelling portion, such as an apartment in an apartment building.

PART I

CONDOMINIUM CONVERSIONS AND THEIR EFFECTS IN HAWAII

LIMITATIONS OF DATA (Excludes projects with 6 or less units)

All conversion projects with six or less units have been excluded throughout Part I of this report, and wherever data from Part I are used as a basis of findings or recommendations in this study. This is because the Hawaii TMK Service's Hawaiian Condominium Guide, 1980-1981 which was used as the source of data for conversions through 1979, excludes condominium projects with six or less units. For consistency, the 1980 and 1981 conversion projects with six or less units were also excluded. The source of data for the 1980-1981 (through July 22, 1981) conversions was the records of the Hawaii State Real Estate Commission. This exclusion of projects with six or less units causes the proportion of converted condominium units in Hawaii's condominium inventory to be understated (Chapter 1, Part A). Also the finding of a trend towards conversion of smaller units (Chapter 1, Part B) may be less valid to the degree that these exclusions are not in the data base. All commercial units are also excluded, whether they comprise a building that is wholly commercial, or are just a few units, such as a store or lounge, in a primarily residential building.

Chapter 1

DATA ON HAWAII'S CONDOMINIUM CONVERSION ACTIVITY

A. CONVERTED CONDOMINIUMS IN HAWAII'S CONDOMINIUM INVENTORY AND AS PART OF THE RENTAL HOUSING SUPPLY

As of the end of 1980, there was an aggregate number of 80,432 condominium units in the State of Hawaii, of which 7,993 or approximately 10 per cent were the result of conversion.¹ The percentage that converted units are of the cumulative condominium inventory has been increasing steadily each year from 6 per cent in 1975 to 10 per cent in 1980.²

The distribution between Oahu and the neighbor islands is shown in Table A.

Table A
HAWAII'S CONDOMINIUMS
(as of December 31, 1980)

ISLAND	CONDOMINIUMS				
	Total Inventory In Units	Conversions			
		Projects	Units	Average No. of Units Per Project	As Percentage of Total Inven- tory in Units
Oahu	61,247	151	7,236	48	12%
All Other Islands	19,185	14	757	54	4%
TOTAL (State)	80,432	165	7,993	48	10%

Sources: Bank of Hawaii, Economics Division, Construction in Hawaii, June 1981
(Honolulu: 1981), p. 6;
Real Estate Commission records;
Hawaii TMK Service, Hawaiian Condominium Guide, 1980-1981
(Honolulu: 1980).

Ninety-one per cent of the conversion projects and converted units are on Oahu.³

DATA ON HAWAII'S CONDOMINIUM CONVERSION ACTIVITY

Table B gives the percentages that conversions from 1963 through 1980 represent of the privately-owned and of the public- and privately-owned 1980 rental housing supply.⁴

Table B
PERCENTAGE CONVERTED UNITS IS TO RENTAL UNITS

	Public & Private Units	Private Units
Oahu	4.9%	5.9%
Neighbor Islands	1.5%	1.6%

B. TREND TOWARDS CONVERSION OF SMALLER PROJECTS

Considering all conversions cumulatively (1963-July 22, 1981), a slight majority of conversions occurred in projects with a smaller number of units. Fifty-three per cent of the units were in projects with less than 30 units, while 47 per cent of the units were in projects with 30 or more units.⁵

The data show, however, that the conversion of smaller projects, that is, projects with a smaller number of units, is a very recent trend. This trend is shown in Table C. For comparison purposes, the time periods of 1975-1979 and 1980-1981 are used, since almost the same number of projects were converted.⁶

Table C
CONVERSION PROJECTS

Year Converted	Number of Projects	Yearly Range of			Percentage With	
		Median Size in Units	Average Size in Units	Percentage With at Least 30 Units	Less Than 20 Units	More Than 50 Units
1975-1979	68	28-44	46-80	50-69	19	38
1980-1981 (through July 22, 1981)	70	18-20	37-52	27-33	59	13

Sources: Real Estate Commission records;
Hawaii TMK Service, Hawaiian Condominium Guide, 1980-1981 (Honolulu: 1980).

CONDOMINIUM CONVERSIONS IN HAWAII

Reasons for Trend Toward Conversion of Smaller Projects

The trend towards conversion of smaller projects appears to be due to a scarcity of larger buildings to convert.

This 1980 to 1981 trend towards converting smaller projects can be explained by examining Oahu's recent conversions. Oahu is singled out because 67 of the 70 projects converted in 1980-1981 were located on Oahu.⁷

Table D shows the unit-size range of Oahu's apartment buildings as of the end of 1979. This Table indicates the size range of Oahu's apartment buildings available for conversion as of the end of 1979. It excludes townhouses, single-family homes, and duplexes, which comprised 9 per cent of all Oahu conversions cumulative to the end of 1978.⁸ As of the end of 1979, 96 per cent of all Oahu apartment buildings had less than 30 units. Only 4.5 per cent had 30 or more units. Thus, conversions of smaller projects may have occurred due to the lack of larger buildings.

Table D

OAHU APARTMENT INVENTORY BY SIZE OF BUILDING
(Cumulative as of December 31, 1979)

	Range of Number of Units in Apartment Building				
	3-19	20-29	30-39	40-50	More than 50
Number of Apartment Buildings	3,074	157	62	27	64
Percentage of Total Number of Apartment Buildings	91%	4.6%	1.8%	.8%	1.9%

"Apartment" means 1 structure with more than 2 units, and more than 1 story, with units that are not owned in the form of condominium ownership.

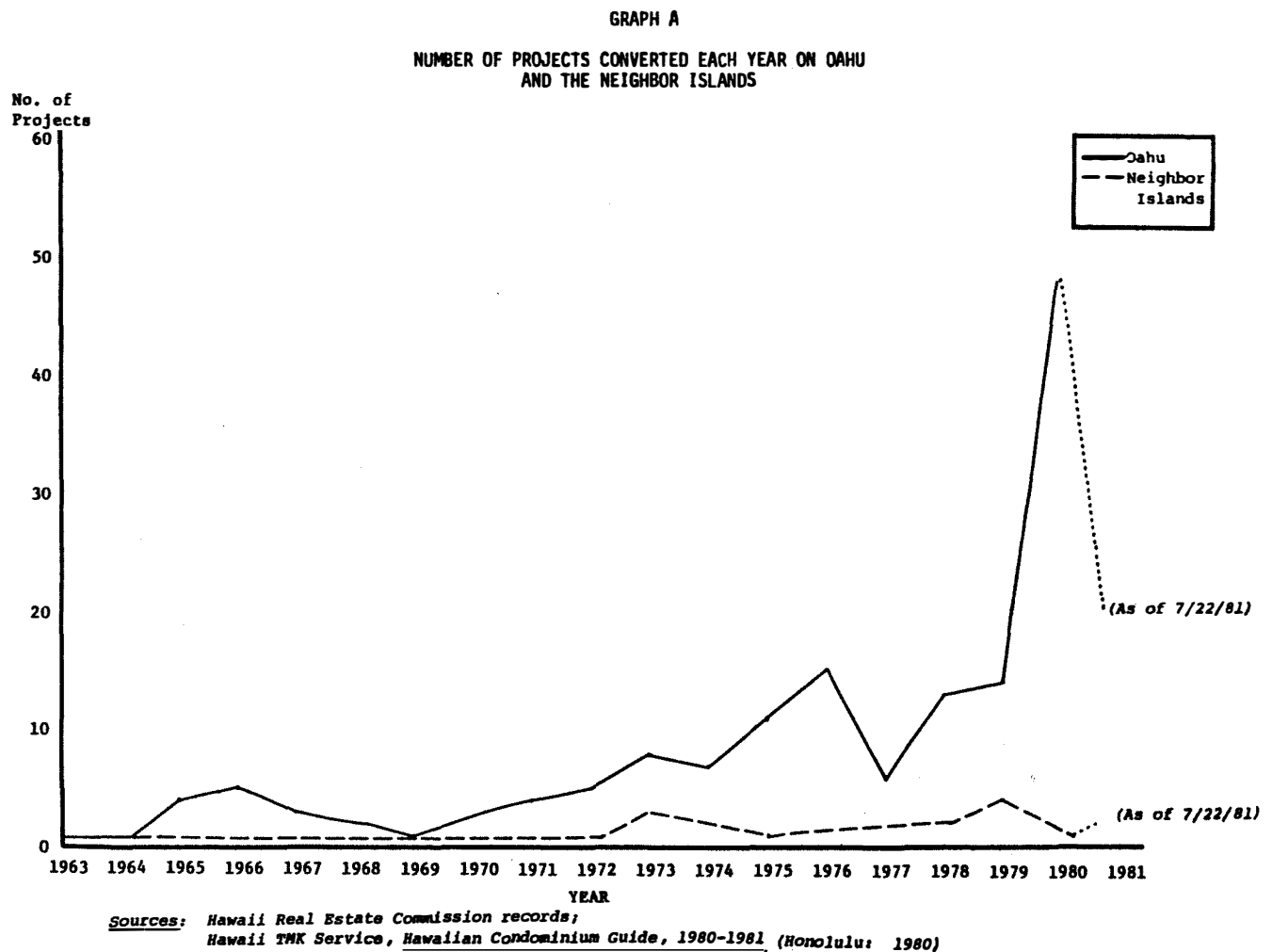
Source: Department of General Planning, City and County of Honolulu.

C. INCREASING RATE OF CONVERSION ACTIVITY ON OAHU

Graph A shows that the rate of projects being converted on Oahu has been increasing each year from 1977. More than twice as many projects were converted on Oahu in 1980 than in any other previous year.⁹ Similarly, although the figures for 1981 are not complete, as of July 22, 1981, more projects on Oahu had been converted in 1981 than in any year previous to

DATA ON HAWAII'S CONDOMINIUM CONVERSION ACTIVITY

the record year of 1980.¹⁰ The limited number of larger apartment buildings available for conversion on Oahu, as of the end of 1979, has apparently not slowed the rate of conversion activity.



In terms of the number of units converted, conversions on Oahu before 1970 were less than 10 per cent of the Oahu cumulative converted condominium inventory as of July 22, 1981.¹¹ About one-half of the total number of units on Oahu have been converted since 1977, with 44 per cent of the Oahu units converted during the period of 1979 through July 22, 1981.¹²

There appears to be no similar trend towards an increase in the rate of projects being converted on the neighbor islands. However, in terms of number of units converted, almost one-half of the neighbor island units were converted after 1977.¹³ There was, however, no sharp increase in either the number of projects or units converted in 1980 and 1981, as there was on Oahu.

CONDOMINIUM CONVERSIONS IN HAWAII

D. OWNER-OCCUPANCY AND TREND TOWARDS DECREASED OWNER-OCCUPANCY OF CONVERTED UNITS ON OAHU

Using the assumption that units must be owner-occupied when real property tax home exemption claims have been filed for them, the following percentage of all units converted from 1963 through 1979 were owner-occupied in 1980:¹⁴

Statewide	25 per cent
Oahu	28 per cent
Neighbor Islands	2.4 per cent

While the owner-occupancy of units after conversion results in depletion of the rental housing supply, a corollary is the reduction in demand for rental housing when former renters become owner-occupants. Unfortunately, no data are available concerning the reduction in renter demand when renters become owner-occupants (includes previous renters who buy converted units and previous renters who move from converted buildings and buy housing elsewhere). Also, no data are available on homeowners who become renters of converted units, which increases the demand for rental housing. Of course there is no depletion to the rental housing supply when units are available for tenants to rent after conversion with only a change in ownership.

In 1980, the rental housing supply was depleted by the following percentages due to owner-occupancy in 1980 of units converted from 1963 through 1979:¹⁵

PERCENTAGE CONVERTED UNITS LOST TO OWNER-OCCUPANCY IS TO RENTAL UNITS

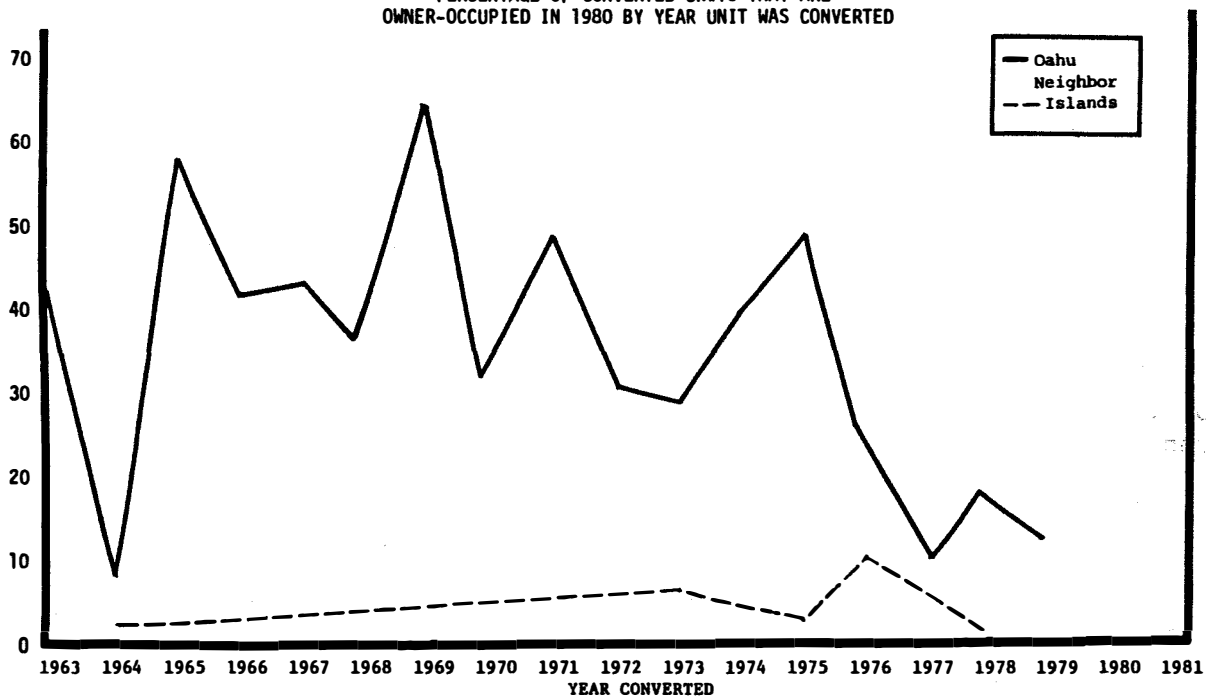
	<u>Public & Private Units</u>	<u>Private Units</u>
Oahu	1%	1.2%
Neighbor Islands	.04%	.04%

Graph B shows a trend towards decreased owner-occupancy for Oahu units converted in recent years. Conversions on the neighbor islands have consistently had a very low percentage of owner-occupancy. The 1980 rate of owner-occupancy ranged from 11 to 25 per cent for Oahu projects converted from 1976 through 1979. This range of 11 to 25 per cent is relatively low compared to the owner-occupancy rate of projects converted previously, which ranged from 28 to 62.5 per cent, except for 1964, and compared to the 1980 Oahu owner-occupancy rate of 28 per cent of converted units.

DATA ON HAWAII'S CONDOMINIUM CONVERSION ACTIVITY

GRAPH B

PERCENTAGE OF CONVERTED UNITS THAT ARE
OWNER-OCCUPIED IN 1980 BY YEAR UNIT WAS CONVERTED



Sources: For number of projects and units and year converted:

Real Estate Commission Records;

Hawaii TMK Service, *Hawaii Condominium Guide, 1980-1981* (Honolulu: 1980).

For home exemption claims:

TMK Sales Journal, *Hawaiian Condominium Guide, 1980-1981, Sales/Owner's Journal* (Honolulu: 1980);

Real Estate Data, Inc., *Real Estate Atlas of the State of Hawaii - Condominium Ownership Volumes, 1980* (Honolulu: 1980);

Real Estate Atlas of the State of Hawaii - 1st thru 4th Tax Divisions - Geographical Ownership Volumes (Honolulu: 1980).

Graph B indicates a trend towards increased availability of converted units on Oahu for rental, assuming that units which are not owner-occupied are available for rental. The decreasing owner-occupancy percentage for Oahu's more recent conversions, from 1976 through 1979, is significant because these conversions comprise almost one-half of Oahu's conversions cumulative through 1979.¹⁶

Further data on owner-occupancy rates for 1980 and 1981 conversions could show whether the 1976-1979 trend is continuing, and would be important because Oahu conversions in 1980 and 1981 comprise about one-third of Oahu's conversions cumulative to July 22, 1981.¹⁷ Home exemption information, however, is not complete on these conversions.

The recently passed Economic Recovery Tax Act of 1981 will probably encourage investment in rental properties since it allows 15-year depreciation

CONDOMINIUM CONVERSIONS IN HAWAII

for tax purposes, which is less than one-half the current minimum. By shortening the recovery period on real estate, the negative cash flow may be reduced or become positive.¹⁸ This tax incentive may encourage the trend towards investors buying converted units.¹⁹

E. SHORT-TERM RENTAL AVAILABILITY OF CONDOMINIUMS AND CONVERTED CONDOMINIUMS

Converted condominiums appear less likely to be available for transient or visitor use than all condominiums. Fifteen per cent of converted condominiums compared to 18 per cent of all condominium units were available for short-term rental of less than 6 months as of the end of 1980.²⁰

F. AGE OF CONVERTED PROJECTS

Projects converted on Oahu through 1979 have both a median and an average age of 9 years.²¹ Projects converted on the neighbor islands through 1979 have a median age of 5 years and an average age of 5.6 years.²²

Chapter 2

IMPORTANCE OF RENTAL HOUSING

This chapter discusses why an adequate supply of affordable rental housing is important in Hawaii.

A. MAJORITY OF POPULATION RENT

The majority of the population in Hawaii rent their homes.¹ Table E gives the percentage that renter-occupied or vacant housing units represents of the total housing units available in the State and on Oahu for 1970 and 1980.

TABLE E

PERCENTAGE OF RENTER-OCCUPIED OR VACANT
HOUSING UNITS OF ALL HOUSING UNITS

	Public & Private		Private	
	1970	1980	1970	1980
State	59%	59%	55%	55%
Oahu	61%	59%	56%	54%

Source: "Housing Unit Estimates for Hawaii, 1970-1981";
Statistical Report 148 (Department of Planning and Economic
Development, State of Hawaii, July 15, 1981), Tables 1 and 3.

B. LACK OF AFFORDABLE HOMEOWNERSHIP OPPORTUNITIES

The trend over the past 20 years in Hawaii has been towards decreased home-purchasing power by residents in terms of family incomes, housing prices, and mortgage rates.

1960s: Affordable

In the 1960s, the prices of family housing in Hawaii remained in balance with family incomes which nearly kept pace with the annual increases in

CONDOMINIUM CONVERSIONS IN HAWAII

prices. Families were generally able to find units at prices they could afford on the basis of standard mortgage financing terms.²

1970-1975: Prices Rising Faster Than Income

Between 1970 and 1975, the prices of houses rose at an accelerated rate that outpaced the rise in family incomes. By 1975 prices reached levels where families at the average income level could have qualified to buy only by providing additional equity to the standard 20 per cent down payment.³

1976 to Present: Prices and Mortgage Interest Rates Rising Faster Than Income

Starting in 1976 not only did incomes fail to keep pace with increases in local housing prices, but the prices for housing which families could afford on the basis of income failed to advance because of higher mortgage interest rates. At the same time, the prices of homes took an unprecedented upturn.⁴

Present: Prices Stabilizing But Higher Mortgage Interest Rates

It has now become virtually impossible for most local residents to purchase a first home with a purchase made only by paying a substantial down payment. The average resale price of a single-family home on Oahu as of February 1981 was about \$169,000.⁵ Although prices appear to have stabilized,⁶ the potential home buyer still must pay high mortgage interest rates, if a mortgage is at all attainable.

A family in 1980 had to earn at least \$66,000 a year to qualify to buy a \$169,000 home. This is based on a 20 per cent down payment, a 30-year mortgage, and an interest rate of 12.5 per cent resulting in monthly mortgage costs of \$1,444. Other home related expenses such as taxes and insurance increase the monthly payment to \$1,529. When the qualifying ratio of 3.6 to 1 (the portion of income for shelter required to buy a single-family home) is applied, the monthly income needed was \$5,500 or \$66,000 a year.⁷

In May of 1981, with interest rates increased to 15.5 per cent, monthly family income had to be \$6,700 monthly or \$80,000 a year to qualify.⁸

While the price of the average single-family home on Oahu has doubled over the last six years (from \$84,000 to \$169,000), the income necessary to purchase that house has almost tripled (from \$27,900 to \$80,000).⁹

A similar situation exists for condominiums on Oahu. If it is assumed that the average price of a condominium on Oahu has stabilized at \$103,000, the annual income needed to buy it has increased from \$47,000 in 1980 to \$51,400 in 1981. This may be contrasted to the average condominium purchase price on Oahu in 1975 of \$56,000 and qualifying income of \$20,000.¹⁰

IMPORTANCE OF RENTAL HOUSING

These 1981 figures are based on the May mortgage interest rate of 15.5 per cent.¹¹ Since May, the rate has climbed even higher. According to the Federal Home Loan Bank Board, the average effective commitment rate by major lenders for conventional loans on new single-family homes with a 25-year maturity and a 25 per cent down payment was 16.75 per cent in early June¹² and 16.95 per cent in early July,¹³ an all-time peak. Thus, the qualifying income would be even higher. When compared to median family income of a four-person family of \$24,582,¹⁴ the seriousness of the housing problem becomes apparent. Most of the potential home buyers are out of the market.

Future

According to the chief economist of the National Association of Realtors, a return to loan rates in the 10 to 11 per cent range of 2 years ago are a long way away. He predicts interest rates are not likely to fall below 14 per cent without a significant decline in inflation. He predicted mortgage rates would stay in the 14 to 15 per cent range the next 18 months (from July 1981).¹⁵

A factor that may mitigate against the lack of affordable homeownership opportunities is the recently passed "Ohana" zoning law, which will be effective January 1, 1982.¹⁶ This law allows the construction of 2 dwelling units on 1 residential lot. In enacting this law, the 1981 Legislature was cognizant of the inability of many families to purchase their own homes due to spiraling housing costs, limited land available for housing, and failure of wages to keep pace with inflation.¹⁷ The purpose of the law is to assist families to purchase affordable individual living quarters by increasing the supply of affordable housing.¹⁸ Thus, "ohana" zoning may provide some relief from the demand for rental housing by increasing the supply of affordable housing and it may make more rental units available.

C. STRONG RENTAL HOUSING DEMAND BY "BABY BOOM" GENERATION

In Hawaii the fastest growing segment of the population from 1970 to 1980 has been among persons 25 to 34 years of age,¹⁹ the "baby boom" generation. This has and will continue to have a profound impact on housing, since this age bracket represents the prime home-purchasing group. According to the U.S. League of Savings Banks, households headed by someone between the ages of 25 and 34 bought almost one-half of all single-family homes sold in the United States at the close of the last decade.²⁰

Further pressure on the demand for housing may be intensified as the baby boom babies marry and have their own children. There has been a recent steady rise in the U.S. marriage rate.²¹

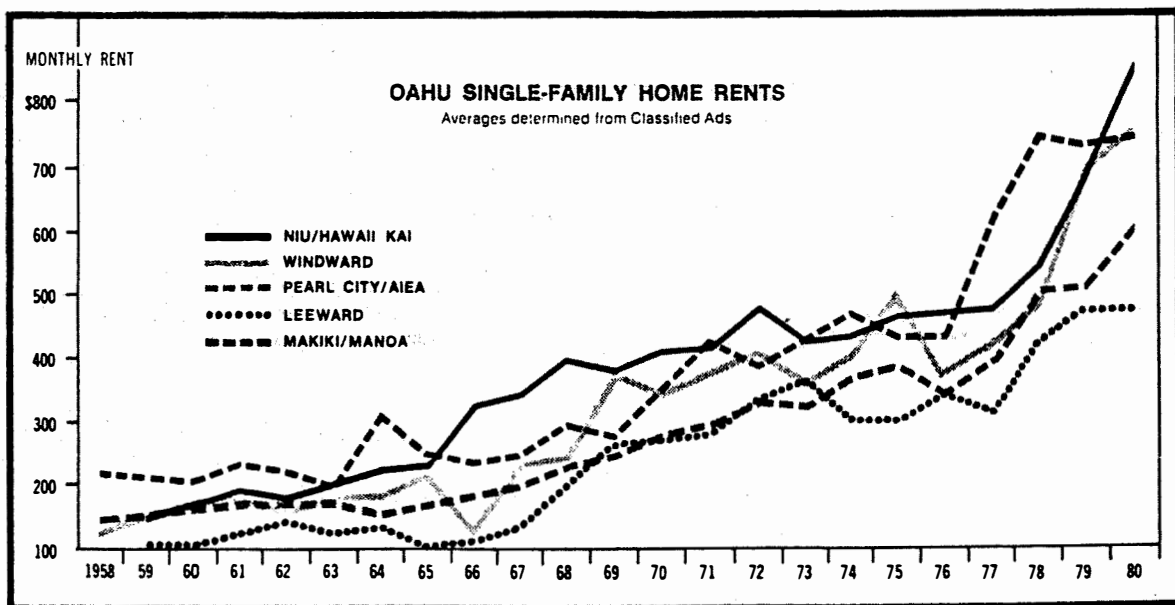
An ever larger proportion of households and particularly the baby boom generation, who are mostly first-time buyers, cannot afford to buy homes due to high mortgage interest rates and home sales prices. This creates the

CONDOMINIUM CONVERSIONS IN HAWAII

situation where most of Hawaii's baby boom generation must rent, move back with their parents, postpone moving away in the first place, or even leave the islands. Thus, there is and will continue to be a strong demand for rental housing because of the maturing of the baby boom generation, the fastest growing segment of the population, to the age of household formation, and the lack of affordable homeownership opportunities.

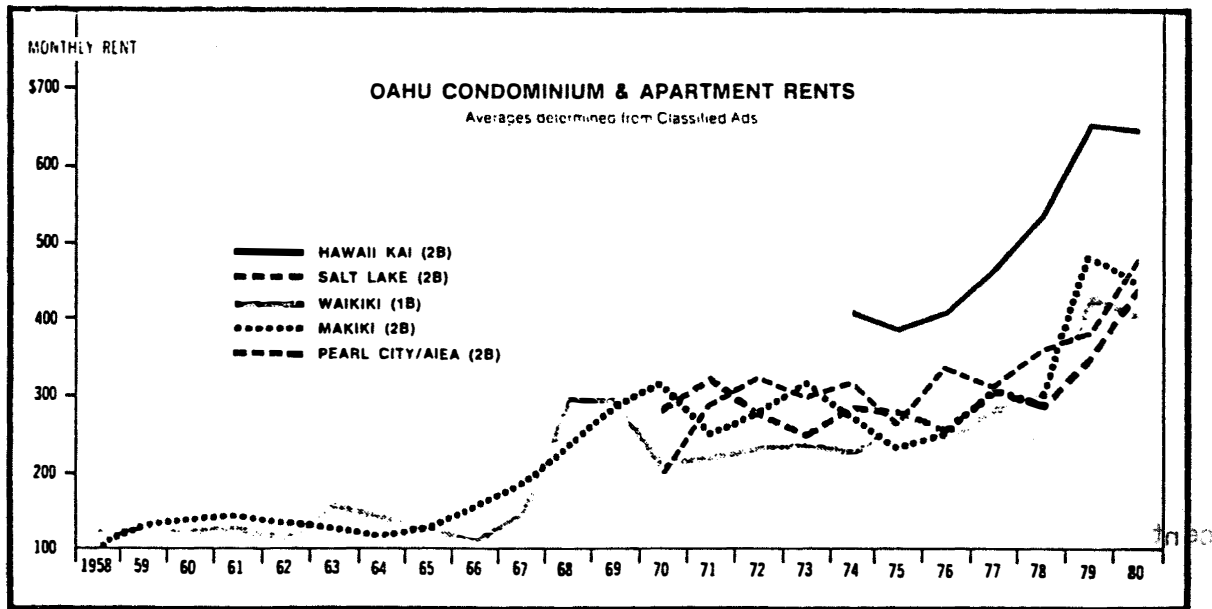
D. INCREASING RENTS AND THE TREND AWAY FROM APARTMENTS TO CONDOMINIUMS

As shown by the graphs below, rental costs for all types of rental housing on Oahu have increased since 1958.²² Nationally, it is recommended that rent paid represent not more than 25 per cent of monthly income,²³ but on Oahu in 1976, the median monthly rent was 26 per cent of income. The median rent has increased by 44 per cent from 1976 to 1979 and by 27 per cent from 1979 to 1980 alone.²⁴



Source: Locations, Inc., Hawaii Real Estate Indicators, May 1980.
(Honolulu: 1980).

IMPORTANCE OF RENTAL HOUSING



Source: Locations, Inc., Hawaii Real Estate Indicators, May 1980
(Honolulu: 1980).

The trend in Hawaii has been away from apartments to condominiums. Oahu's cumulative privately-owned condominium and apartment inventory shows that by the end of 1977, there were 729 more apartment units than multi-family condominium units. Two years later, by the end of 1979, there were 2,168 more condominium units than apartment units.²⁵

A virtual halt in the development of private commercial rental projects, the increase in condominium conversions,²⁶ and the construction of condominiums²⁷ have contributed to the increase in condominium units over apartments. The reasons given for this change in development focus include declining operating and profit margins for rental properties²⁸ and the greater profit potential for apartment owners in sale of their properties for conversion (as opposed to rental income, tax depreciation, property appreciation, and tax sheltering).²⁹ Condominium converters as well as new condominium project developers are motivated by the strong demand for condominium type of housing.³⁰ From the buyers' standpoint, residential real estate has become an attractive vehicle of investment,³¹ since its appreciation has been greater than the inflation rate.³² Inflation also tends to shift home buying demand from single-family homes, that may be priced too high, to less expensive condominiums.³³

Data show that investors do place their condominiums in the rental pool-- 77 per cent of Oahu's condominiums at the end of 1979.³⁴ Condominiums, however, command higher rents than apartments.³⁵ Thus, it may be said that the trend towards more condominiums than apartments contributes to increasing rents.

CONDOMINIUM CONVERSIONS IN HAWAII

E. DECREASING PERCENTAGE OF PUBLIC HOUSING

There are also relatively fewer government-assisted units which are comprising an increasingly smaller percentage of the State's housing unit inventory. Compared historically, public housing comprised the following percentages of the housing inventory in Hawaii:³⁶

1960	10%
1965	10%
1970	9.6%
1975	9%
1980	8%

With the present reductions to the federal Department of Housing and Urban Development's budget, the supply of government-assisted units is not likely to substantially increase.³⁷

Chapter 3

CONVERSIONS' DETRIMENTAL EFFECTS

The detrimental consequences of the conversion of rental housing to condominiums in Hawaii include the depletion of the supply of rental housing for residents on Oahu; probable increased rent after conversion; and probable displacement of low- and moderate-income and needy elderly tenants by recent conversions.

A. DEPLETION OF RESIDENTIAL RENTAL HOUSING BY SHORT-TERM RENTAL AND OWNER-OCCUPANCY ON OAHU

There is a concern that the conversion of apartment buildings that were available for residential rental may enter the short-term rental pool catering to tourists and thus be unavailable to local tenants seeking long-term rental housing.

There was a 29 per cent reduction in the residential long-term rental inventory on Oahu by conversions from 1967 through 1979,¹ occurring through the conversion of 5,085 rental units.² This 29 per cent reduction only applies to those units that were converted, and not the entire Oahu rental pool. Six hundred eleven of these converted units, prior to their conversion, were available only for short-term rental, catering to the tourist market,³ leaving 4,474 units in the residential rental inventory. After conversion, at the end of 1980, 206 of these units were available for short-term rental and 1,366 units were owner-occupied.⁴ These 1,572 units deplete the residential rental inventory. Additionally during this period, 262 units changed from short-term rental to long-term rental,⁵ adding to the residential rental inventory. The net of the additions and depletions to the long-term residential rental inventory resulted in a 1,310 unit depletion of the residential rental inventory, a 29 per cent reduction to the 4,474 residential long-term rental market. It should be noted, however, that there is a reduction in demand for rental housing when former renters become owner-occupants. Unfortunately, this data is not available.

On the other hand, it should also be noted that the long-term versus short-term rental status of these converted units was measured by the Hawaii Visitors Bureau data for February 1981. The 1981 data might indicate a lower than normal number of units in the short-term rental pool because of the recent downturn in tourism.

With the downturn of tourism, many Waikiki condominium owners look to the long-term residential market rather than the short-term resort market for rental income.⁶ During 1980, Waikiki lost 970 resort units.⁷ Most of the decline was in condominiums, rather than hotels or apartment-hotels.⁸ Most of the properties removed from the visitor market in Waikiki were turned into regular apartment use for long-term lease residents.⁹

CONDOMINIUM CONVERSIONS IN HAWAII

The tendency of condominium owners in Waikiki to make their units available for long-term rental in periods of depressed tourism occurs among owners of converted units as well. The yearly percentages of units available for short-term rental in converted condominium buildings, located in Waikiki and the Ala Moana area, somewhat follows the Waikiki hotel occupancy rate.¹⁰ From 1976 to 1978 hotel occupancy was high, in the 80th percentile bracket, and during this period and extending into the following year, the percentage of converted units available for short-term resort rental increased steadily.¹¹ From 1978 until the end of April in 1981, the Waikiki hotel occupancy rate dropped.¹² Similarly, from 1979 through February 1981, the percentage of converted units available for short-term rental decreased.¹³

One may hypothesize a correlative relationship between the hotel occupancy rate and the availability of these types of units for short-term rental. As the hotel occupancy rate drops, more converted condominium units are removed from the transient use market and become available for long-term residential rental. This relationship is probably attributable to the condominium owners' needs for a steady return on their investment. When units cannot be rented for short-term periods, long-term rental becomes economically necessary.

B. PROBABLE INCREASED RENT AFTER CONVERSION

Although the purchase of converted units by investors may have no negative impact on the supply of rental housing, it is likely to have an impact on the rental prices since investor-owned condominiums command higher rents than commercial rental apartments.¹⁴ Although no data are available comparing the rent price of units in Hawaii before and after conversion, it appears rents may increase after conversion since the owner is usually subject to cash flow demands of monthly mortgage and maintenance fee payments, and the unit may have been improved in the conversion process. Another possible reason for rent to increase after conversion is that the previous landlord may not have been financially motivated to charge market rent, as for example due to a lack of tax benefit, or the landlord may have been ignorant of the market rent, in addition to the unit commanding higher rent due to improvements to it in the conversion process. In a national study 30 per cent of the tenants who continue renting the same unit converted to condominium experienced an increase in housing costs after the conversion process.¹⁵ In most cases, the increases were small.¹⁶ One-fourth of all continuing renters, however, paid rents that were more than 10 per cent higher than they had paid prior to conversion.¹⁷

Despite a probable increase in rent of converted condominiums as compared with rent of a pre-conversion apartment unit, the rent for condominiums is generally still less than for single-family homes.¹⁸

CONVERSIONS' DETRIMENTAL EFFECTS

C. DISPLACEMENT

Displacement, the involuntary movement of people from their homes, has become the most problematic and pressing problem associated with the condominium conversion trend. According to a recent national study on conversions done by the Department of Housing and Urban Development (HUD), the proportion of tenants who leave converted buildings rather than stay as owners or renters, ranges between 58 and 66 per cent.¹⁹ The study found that if displacement is defined as movement to rental housing that is of similar or lower quality at higher cost, or of lower quality at equivalent cost, then 18 per cent of all households (27 per cent of households with persons age 60 and over) who moved from buildings being converted have experienced adverse effects of displacement.²⁰ This is equal to 10 per cent of those who resided in buildings prior to conversion.²¹

Elderly

The conversion process itself can adversely affect elderly persons who are renters at the time of conversion.²² Elderly people have distinctive housing related problems and preferences, including reliance on fixed income sources, more widespread existence of medical conditions hindering mobility and independence, and the desire to remain in familiar surroundings of home and neighborhood.²³ The displaced elderly who must involuntarily move from their homes are more likely to have difficulty locating replacement housing than most other households.²⁴

Buildings with "Convertible" Potential

National Experience

The type of rental buildings usually considered to have the most conversion potential are the luxury buildings or buildings located in affluent areas, as evidenced by past conversion history. If only these types of buildings are converted, then conversions will not directly result in taking rental units from the poor or perhaps even moderate income tenants.

According to HUD's national study on conversions, conversions are somewhat more numerous in areas where more households have incomes above \$25,000, where luxury buildings form a higher proportion of the rental stock, and where the rental housing stock is relatively new.²⁵ In HUD's study, projections on conversion activity from 1980 through 1985 were made based in part on examining the remaining housing stock considered "convertible", which is the proportion of housing stock with characteristics similar to buildings converted in 1977-1979.²⁶ Two attributes considered particularly significant were that the condition of the structure be well-maintained rental property with relatively new mechanical systems and structural components, and the desirability or demand for the units be in buildings with desirable locations, sought after amenities, and status or prestige.²⁷ Age was used to measure the condition, and rent level (relative to median rent in the community) was used to measure desirability.²⁸ "Prime buildings" for conversion were units which rented for 150 per cent or more and were built

CONDOMINIUM CONVERSIONS IN HAWAII

after 1965; "marginal buildings" rented for 125 to 150 per cent and were built after 1965; and "rehabilitation buildings" which only have conversion potential after rehabilitation were built before 1965 and rented for 125 per cent or more.²⁹

The record on condominium conversions maintained by the District of Columbia's Department of Housing and Community Development indicates that the vast majority of units converted from rental to condominium housing are located in the most affluent sections of the city.³⁰ The conversion rate in sections of the city with high concentrations of low-income tenants was minimal.³¹ American Invesco, the nation's biggest condominium converter, saw the supply of a skyline full of luxury rental buildings ready for plucking on the demand side in the growing trend towards individual apartment ownership.³² Thus, it would seem that the more expensive rental buildings are usually considered to be the types of buildings with the most "convertible" potential.

Hawaii

In Hawaii, conversions have been scattered throughout the State with heavier concentrations in the Keeaumoku-Makiki and Waikiki areas.³³ Condominium conversions, however, are widespread on Oahu as they affect almost every area.³⁴ Thus on Oahu, unlike Washington D.C., where most of the conversions were in the most affluent sections and minimal conversions were in the low-income sections of the city, there are probably conversions affecting low- and moderate-income tenants. Also affected would be the elderly, who are considered to have housing needs, the majority of whom are renters and located on Oahu.³⁵

The probability of conversions affecting these tenants seems even more likely since the recent trend of increasing conversions on Oahu has been focused on converting smaller buildings,³⁶ and these smaller buildings probably have lower rents than high-rises. HUD's national study on conversions noted that once the supply of potential conversions is exhausted in an area, it is possible that perception of what type of unit is suitable for conversion may change. The study went on to note that if this occurs, more modest, less desirable units (than the "prime, marginal and rehabilitation buildings") not considered in this analysis may be converted.³⁷ Hawaii's earlier conversions may have concentrated on the more luxury-type "prime buildings" as did Invesco, since the earlier years of conversions were in larger high-rise buildings.³⁸ The recent trend towards increased conversions of smaller buildings,³⁹ however, probably is resulting in the displacement of low- and moderate-income and need group elderly tenants more than in the past.

Chapter 4

BENEFITS OF CONVERSIONS

The beneficial consequences of conversion activity in Hawaii include additions to the residential long-term rental housing supply on the neighbor islands, increased real property tax revenues to the counties, and the creation of additional and more affordable homeownership opportunities for potential home buyers.

A. ADDITIONS TO RESIDENTIAL RENTAL HOUSING ON NEIGHBOR ISLANDS

There was a 5.6 per cent increase in the residential long-term rental inventory on the neighbor islands from 1967 through 1979,¹ occurring through the conversion of 634 units.² This 5.6 per cent increase applies only to those units that were converted, and not the entire neighbor island rental pool. This occurred as follows: prior to conversion, 207 of these units were available only for short-term rental, catering to the tourist market,³ leaving 427 units in the residential rental inventory. After conversion, at the end of 1980, 66 units were available for short-term rental and 15 units were owner-occupied.⁴ These 81 units reduced the residential rental inventory. Additionally, during this period, 105 units had changed from short- to long-term rental adding to the residential rental inventory.⁵ The net change of the additions and depletions to the long-term residential rental inventory resulted in 451 units or a 5.6 per cent increase to the 427-unit residential rental inventory. This increase is mainly due to the change in availability of converted units from short-term resort rental before conversion to long-term rental and low owner-occupancy after conversion.

The average hotel occupancy rate has been lower on the neighbor islands than on Oahu.⁶ Thus, the additions to the residential rental inventory on the neighbor islands may be inflated beyond the norm that would occur during periods of thriving tourism.⁷

B. INCREASED REAL PROPERTY TAX REVENUES TO THE COUNTIES

Counties benefit from condominium conversions by the receipt of increased real property taxes. Condominium units are individually assessed and taxed as compared to apartment buildings which are assessed and taxed as a single entity.⁸ The aggregate assessment of individual units in converted buildings is greater than the single pre-conversion assessment.⁹

All real property in Hawaii, whether rental or ownership property, are annually assessed at 60 per cent of fair market value.¹⁰ Fair market value is determined by a method which includes looking at the past year's sales price

CONDOMINIUM CONVERSIONS IN HAWAII

of the property.¹¹ If there is no past year's sales price for the property, the past year's sales prices of comparable properties are considered.¹²

Many conversions are accompanied by some minor or cosmetic improvements to the property's condition, equipment, or amenities such as painting, carpeting, making minimal repairs to mechanical systems and structural features, improving landscaping, refurbishing recreational facilities, and upgrading parking areas.¹³ These improvements to the property, as in the case of any other real property, increase its market value, and consequently its assessed value.¹⁴

Thus, the real property tax revenues of the counties are increased by the increased assessed value of converted units due to improvements, and by the greater aggregate assessed value of the individual converted units in the building as compared to the pre-conversion single assessed value of the building.

C. ADDITIONAL AND MORE AFFORDABLE HOMEOWNERSHIP OPPORTUNITIES

Since converted condominiums are often less expensive than newly constructed condominiums or single-family homes,¹⁵ they provide a new avenue of homeownership for persons who have incomes insufficient to buy other types of housing.

Table F shows that on Oahu, the average sales price of condominiums is generally less and has increased at a slower rate than the average sales price of single-family homes. Although no similar figures are available on the average selling price of converted condominium units, if they do in fact sell for less than non-conversion condominium units, then converted condominium units provide additional, even more affordable, homeownership opportunities than units initially built as condominiums and single-family homes.

BENEFITS OF CONVERSIONS

Table F

AVERAGE SALES PRICE OF HOUSING ON OAHU

<u>Year</u>	<u>Existing/Resale</u>		<u>Year</u>	<u>New</u>	
	<u>Residential</u>	<u>Condominiums</u>		<u>Single-Family</u>	<u>Multi-Family</u>
1974	\$ 83,611	\$ 54,956	1974	\$ 53,205	\$46,891
1981	\$169,000	\$106,900	1980	\$131,693	\$93,428
Percent Increase	101%	94.5%		147.5%	99%

Definitions:

"Residential" means single-family or multi-family up to 4 families on a lot; includes duplexes and excludes condominiums.

"Condominiums" mean condominiums, cooperatives, townhouses, and planned unit developments.

"Multi-family" means developments of 4 floors or less; i.e. low-rise condominiums and townhouses.

"Resale" includes sales of converted condominium units.

Sources: For existing or resale: Honolulu Board of Realtors, Multiple Listing Service data;

For new: Bank of Hawaii, Economics Division, Construction in Hawaii, 1981 (Honolulu: 1981), pp. 9, 10.

SUMMARY OF PART I

All references to data on condominium conversion activity in Hawaii and any findings and recommendations based on such data are limited by the exclusion of conversion projects with six or less units and commercial conversion projects.

About 10 per cent of the State's condominium units are conversions--91 per cent of the conversions are on Oahu, which in terms of number of units equals 5.9 per cent of Oahu's privately owned rental housing units. There has been a very recent trend in 1980-1981 towards conversion of smaller buildings, which perhaps may be due to a lack of larger apartment buildings. Conversions have been occurring at an increasing rate on Oahu only, with about 44 per cent of the units converted since 1978. As of 1980, 28 per cent of all units converted on Oahu before that date were owner-occupied, and on the neighbor islands the figure was 2.4 per cent. The rate of owner-occupancy has always been low on the neighbor islands, but there is a trend towards decreased owner-occupancy for units converted recently on Oahu. Converted condominiums are less likely to be available for transient rental than all condominiums generally. The median age of converted buildings on Oahu is 9 years, and 5 years on the neighbor islands.

Rental housing in Hawaii is important for a number of reasons. The majority of the population rents. Homeownership is not affordable by most first-time home buyers, especially the baby-boom generation, the fastest growing segment of the population. Ohana zoning may, however, help mitigate the lack of affordable homeownership opportunities. Rents are increasing. The trend, both in terms of new construction and conversions, has been towards condominiums and away from apartments, due to the greater profit potential for developers, purchasers, converters, and apartment owners. Although about three-fourths of Oahu's condominiums (1979) enter the rental pool, rent is often higher than for apartment units. Government-assisted housing units have constituted a decreasing percentage of Hawaii's housing units.

There are detrimental consequences from the conversion of rental housing to condominiums. The 1967 through 1979 conversions depleted rental housing on Oahu available for long-term rental, and thus residential use, by 29 per cent. This 29 per cent depletion, only applies to those units that were converted, and not the entire Oahu rental pool. These depletions were caused by the change to owner-occupancy and availability only for short-term rental (less than six months) after conversion. This reduction in the rental housing supply, however, is mitigated by the reduction in renter demand when former renters become owner-occupants. The extent of this mitigation is not known. The 29 per cent depletion to the residential rental inventory figure may now be low due to the current downturn in tourism which causes condominium owners to switch their units from the short- to long-term residential rental market. It is likely that rents for converted units bought by investors may be higher than rents before conversion due to investors' cash flow requirements and improvements to the units. Potentially convertible

CONDOMINIUM CONVERSIONS IN HAWAII

rental units are usually considered to be the more expensive units, as evidenced by past conversion activity. In the earlier years of conversions in Hawaii, these were the types of buildings converted. Recent conversions on Oahu, which have been occurring at an increasing rate, are of smaller buildings. A probable result of the conversions of these smaller buildings, which probably rent for less, is the displacement of low- and moderate-income and needy elderly tenants more than in the past.

There are benefits derived from the conversion of rental housing to condominiums. Rental housing on the neighbor islands available for long-term rental, and thus residential use, was increased by 5.6 per cent because of the 1967 through 1979 conversions. This 5.6 per cent increase only applies to those units that were converted, and not the entire neighbor island rental pool. These additions are caused by the change in availability from short- to long-term rental and low owner-occupancy after conversion. The same considerations for Oahu conversions apply to neighbor island conversions including reduction in renter demand when former renters become owner-occupants (which is probably minimal due to low owner-occupancy rate of neighbor island conversions), and a larger increase to the residential rental inventory due to depressed tourism. Counties benefit by the receipt of increased real property taxes, since the aggregate assessment of individual condominium units is greater than the single pre-conversion assessment of the apartment building as a whole, and by increased assessment value of any improved converted units. Converted condominium units probably sell for less than units initially built as condominiums, which in turn sell for less than single-family homes. Thus, conversion units offer additional and more affordable alternatives for those seeking the benefits of homeownership.

PART II

CONDOMINIUM CONVERSION REGULATIONS

Various laws regulating condominium conversions may be classified by whom or what the law intends to protect. Laws in this Part are classified according to whether they protect (1) the existing tenants of proposed condominium conversion projects; (2) the rental market; (3) low- and moderate-income housing; and (4) buyers of converted condominiums.

Many states have legislation enacted at the local levels of county or municipal government. Legislation in Hawaii, if any, and elsewhere at the state and local levels is discussed in this Part under the appropriate classification.

Chapter 5

PROTECTION AFFORDED EXISTING TENANTS

The most prevalent form of protection afforded tenants at both the state and local levels, is a written notice of the proposed conversion or intent to convert, coupled with a guaranteed minimum tenancy period.¹ Another common requirement is that tenants be given first option to purchase their own or another unit in the building, the "right of first refusal".² A few states and a number of localities require converters to provide relocation information, services, or payment of moving expenses.³ A few states, and many of the local jurisdictions requiring relocation assistance give tenants the right to cancel existing leases.⁴ A few states and some localities prohibit harassment of tenants before or during the conversion process and put limits on rent increases.⁵ Only a few localities require tenant approval or consent to conversion.⁶

A. TIME TO DECIDE: NOTICE OF CONVERSION AND EVICTION REQUIREMENTS

Hawaii

Hawaii's Residential Landlord-Tenant Code provides that where the landlord contemplates conversion, the landlord must give 90 days' notice of termination of tenancy for month-to-month tenants,⁷ and 120 days' notice of termination of rental agreements.⁸ Section 16-107-30 of the Department of Regulatory Agencies rules relating to Horizontal Property Regimes requires the developer to submit to the Real Estate Commission a specimen copy of this notice.

Other Jurisdictions

The time given existing tenants for the notice of conversion, which may also constitute notice to vacate, ranges in different state and local jurisdictions from less than 90 days to 1 year.⁹ An 120-day notice period is most common.¹⁰ During this notice period, tenants cannot be evicted except for cause.¹¹ A few states and some localities provide extended notification periods for tenants who are elderly, handicapped, or have minor children.¹² States and some localities provide that tenants may maintain occupancy for the specified minimum period or for the remainder of the existing lease, whichever is longer.¹³

In 1980, Minnesota, Pennsylvania, and West Virginia enacted the Uniform Condominium Act, which was adopted by the National Conference of Commissioners on Uniform State Laws in 1977.¹⁴ This Act requires an 120-day notice of conversion to tenants.¹⁵ The notice must set out the rights of the tenants (to notice and right of first refusal).¹⁶ This notice constitutes notice to vacate if the notice specifies the date by which the unit is to be

CONDOMINIUM CONVERSIONS IN HAWAII

vacated.¹⁷ Pennsylvania adopted a variation requiring a 1-year notice period.¹⁸

B. RIGHT OF FIRST REFUSAL

Hawaii

In Hawaii, each residential unit in a conversion project not located in hotel or resort zoned areas, except for Waikiki,¹⁹ must first be offered for sale to the present tenant occupant if the tenant intends to become an owner-occupant of the unit.²⁰ Beginning fifteen days before the developer notifies the Real Estate Commission of the developer's intent to sell a project which is subject to the Horizontal Property Regime Act, the developer must publish in a newspaper, not less than twice in each of 2 successive weeks, an announcement of the sale of the project.²¹ The announcement must include a statement that 50 per cent of the units will initially be offered for a 10-day period only to prospective owner-occupants.²² The developer's broker is required to compile a reservation list from the date of first publication until 10 days after issuance of the first public report.²³ This reservation list contains the names of people wanting to buy a residential unit.²⁴ In order to be on this reservation list, prospective buyers, including present tenant-occupants must submit a duly executed affidavit of intent to become an owner-occupant and an earnest money deposit in a reasonable amount designated by the developer.²⁵ These contracts of purchase are conditioned upon the buyer obtaining adequate financing within 30 days after the 10-day period during which the developer is limited to selling to owner-occupants.²⁶ If this condition is not satisfied, the earnest money deposit and any other moneys paid pursuant to the contract, less developer's expenses for processing the sales contract, are returned.²⁷ The Real Estate Commission may seek to enjoin developer's action for violation.²⁸

The first public report is at the earliest issued about 3 weeks after the developer files the notice of intent, but may take as long as 6 months.²⁹ Thus, tenants in effect have at least 6 weeks notice (from the first date of newspaper publication until the tenth day after the first public report is issued) of the right of first purchase, and in which to conditionally exercise the right of first purchase. It should be noted that the landlord's 90- or 120-day notice of termination for month-to-month or rental agreement tenants, respectively, also gives notice to tenants of their right of first refusal.³⁰ Thus, tenants could have earlier notice of their right of first refusal than that afforded through the developer's newspaper announcement.

Other Jurisdictions

The right of first refusal generally lasts 30 to 180 days, with most statutes and ordinances specifying 60 or 90 days.³¹ The right-to-purchase periods are measured from varying points in the conversion process including after notice of intent to convert, notice to vacate, issuance of final public reports, or commencement of sales.³²

PROTECTION AFFORDED EXISTING TENANTS

Minnesota and West Virginia adopted the Uniform Condominium Act, which provides tenants a 60-day right of first refusal after delivery or mailing of the notice of conversion.³³ Pennsylvania adopted a variation of this Act which provides a 6-month right of first refusal.³⁴ Under the Act, if the developer conveys to a bona fide purchaser without giving the tenant the first right of refusal, the purchaser's recording of the deed extinguishes tenant's right to buy the unit, but the tenant may still sue the developer for damages.³⁵

Several statutes and ordinances prohibit the developer from offering the unit on more favorable terms for a certain period after rejection by the tenant.³⁶ Under the Uniform Condominium Act, in Minnesota and West Virginia, if the tenant fails to purchase the unit during the 60 days, the developer may not then offer to sell the unit for 180 days at a price or terms more favorable to outside buyers.³⁷ Pennsylvania's variation of the Act provides that if tenant does not purchase the unit during the 6 months, the developer may not then offer to sell the unit for 6 months on more favorable terms.³⁸

A few localities provide tenant organizations the right of first refusal to purchase the building. Washington, D.C., gives tenant organizations a 90-day right of first refusal on buildings with more than 4 units. If there is no existing tenant organization, an additional 30 days is given to allow for the formation of an organization legally capable of owning real estate.³⁹

C. RELOCATION ASSISTANCE

Some states and localities require the developer to pay the moving expenses of tenants leaving the project undergoing conversion. This amount may be actual moving costs subject to a maximum, or a set amount, or may be derived from a formula based on monthly rent or other factors.⁴⁰ Colorado, Tennessee, and Florida permit the developer to terminate or shorten the notice period by paying moving expenses or other agreed upon consideration.⁴¹ Some states and localities limit assistance to elderly or low-to moderate-income tenants, or provide additional benefits for these protected tenants.⁴²

Some states and localities require other types of relocation assistance such as requiring converters to provide information on comparable rental housing available in the area, financing programs, and government housing assistance.⁴³ Los Angeles and Belmont, California, require developers to formulate relocation assistance plans.⁴⁴ The District of Columbia and Oak Park, Illinois, offer their own relocation agency services.⁴⁵

D. RIGHT TO CANCEL EXISTING LEASES

Arizona, Maryland, and Minnesota and many localities which provide relocation assistance allow tenants to terminate their leases early without

CONDOMINIUM CONVERSIONS IN HAWAII

penalty,⁴⁶ usually after giving 30-day written notice of the termination to the landlord.⁴⁷ This right of lease cancellation is usually exercisable any time after notice of the impending conversion is given by the landlord.⁴⁸ This right allows tenants who have located a new place to live to move quickly and avoid paying double rent for early termination of a lease or rental agreement.

E. RIGHT TO QUIET ENJOYMENT

The right to quiet enjoyment involves protecting tenants from harassment during the conversion process.

Hawaii

Under section 521-53, Hawaii Revised Statutes, the tenant cannot unreasonably withhold consent to the landlord to enter the unit in order to make necessary or agreed repairs, decorations, alterations, or improvements; or to exhibit the dwelling unit to prospective purchasers. The landlord is not allowed, however, to abuse this right of access, nor use it to harass the tenant. Normally the landlord must give tenant at least 2 days' notice and enter only during reasonable hours.

Other Jurisdictions

A few states and localities prohibit or limit any repairs or remodeling of the unit. Tenant's approval is needed in Arizona, and "reasonable precautions" to ensure tenant safety and security must be taken in Minnesota.⁴⁹ Marin County and Oakland, California, prohibit remodeling for 30 days after issuance of the final subdivision report.⁵⁰ Los Angeles County, California and Evanston, Illinois, disallow repairs or remodeling until tenant vacates or purchases the unit.⁵¹

A few states and localities limit the timing and frequency that a tenant's apartment can be shown to prospective purchasers.⁵² States which have adopted the Uniform Condominium Act prohibit changes in terms of the tenancy, including rent increases, during the required notice of conversion period.⁵³ Under state law in New York City, the attorney general may obtain an order restraining conduct or prevent selling a unit if a tenant has vacated or is about to vacate because of any person's course of conduct which substantially interferes with or disturbs the comfort, repose, peace, or quiet of the tenant in the use or occupancy of the dwelling unit or its related facilities.⁵⁴

PROTECTION AFFORDED EXISTING TENANTS

F. RIGHT TO CONTINUED OCCUPANCY, LEASE EXTENSIONS, AND LEASE RENEWALS

Statutory tenancies have been allowed in localities for all or some tenants (as the elderly and handicapped) for the life of the renter, for a fixed period, or as a right to lease extension or lease renewals.⁵⁵ Technically, the whole building is converted to a condominium, but certain units are rented to tenants who wish to remain as renters.⁵⁶ The developer either holds the units or sells the units to investors subject to the terms of a lease providing for controlled rent.⁵⁷

Under New York state law, converters in New York City must offer life tenancies to tenants who are 62 years or older on the date the conversion offering plan is declared effective, who have resided in the unit as their primary residence at least 2 years, and who have an annual household income of less than \$50,000, or to handicapped tenants who have resided in the unit as their primary residence at least 2 years.⁵⁸ Rent is not subject to unconscionable increases beyond ordinary rent for comparable apartments during the period of their occupancy.⁵⁹ Tenants may stay until they die or leave voluntarily, unless they breach the lease agreement.⁶⁰ These tenants also have the right to be serviced by the same managing agent who services apartment purchasers and who must provide services and facilities on a non-discriminatory basis.⁶¹ The New York legislature has also given municipalities in the counties of Nassau, Rockland, and Westchester the option to pass similar ordinances protecting the elderly and handicapped.⁶² A number of communities in these counties have chosen to be covered by this state law.⁶³

Oakland, San Francisco, and Walnut Creek, California, also grant life tenancies to elderly tenants.⁶⁴ Other local jurisdictions provide for continued occupancy of limited periods for protected classes of tenants.⁶⁵

San Francisco grants all tenants an additional 1 year lease renewal.⁶⁶ Other California localities have provisions that may grant lease extensions for all tenants.⁶⁷

G. MINIMUM TENANT PURCHASE OR TENANT APPROVAL

Only a few localities require that a certain percentage of tenants must either approve a conversion or agree to purchase units before the conversion can proceed.⁶⁸

A New York state statute, applicable only to the counties of Nassau, Westchester, and Rockland, gives municipalities in these counties the option to come under the New York law.⁶⁹ The law provides a choice of 2 plans, one allowing eviction and the other barring it.⁷⁰ In a plan allowing evictions, 35 per cent of tenants in occupancy must have entered into a purchase agreement before the conversion can occur.⁷¹ No evictions are allowed for 2 years.⁷² In a plan not allowing eviction, agreements by only 15

CONDOMINIUM CONVERSIONS IN HAWAII

per cent of the tenants in occupancy are required for conversion and non-purchasing tenants may stay.⁷³ Conversions are not allowed if at the time of conversion there is an "excessive number" of vacant apartments in the building to be converted to prevent circumvention of the requirement of sales to a certain percentage of tenants.⁷⁴ Under either choice, those 62 years or older and the handicapped may stay.⁷⁵

Chapter 6

RENTAL MARKET PROTECTION: REGULATING THE CONVERSION PROCESS

If the rental market is tightening or being depleted by condominium conversions, then tenant protection to assist tenants to buy, move, or stay may be insufficient, since the rental housing market continues to tighten to the detriment of all tenants. Thus, some jurisdictions have felt the need to protect the rental market itself through regulating the conversion process.

Local governments have enacted practically all the regulations aimed at protecting the rental stock. Differing means of such regulation include: moratoria on conversions; prohibiting conversions when the rental vacancy rate falls below a level considered to represent a stable rental market, with many localities providing an exception if the majority of tenants consent to conversion; a quota system on the annual number of conversions allowed; a formula system tied to the production of new rental housing; and discretionary authority to approve or disapprove specific conversion projects.

A. MORATORIA

A number of local communities have imposed temporary moratorium on conversion activity as a threshold response to significant or impending conversion activity. A moratorium is generally designed to preserve the status quo while the full ramifications of conversion activity on tenants, buyers, the rental stock, and low- and moderate-income housing is assessed and an appropriate local policy is developed. Local moratoria generally range from 30 days to 1 year, with more than one-half lasting for 1 year.¹ A few moratoria have been for more than 1 year.²

B. RENTAL VACANCY RATE MINIMUM

A number of municipalities, predominantly in California, have a rental vacancy rate condition on conversion activity. The most commonly used rental vacancy rate thresholds are 3, 5, and 6 per cent.³ If the rental vacancy rate is less than these percentages, conversions are not allowed. This vacancy rate condition can result in a bar to conversion activity because of the tight rental housing markets and the lack of any new rental construction.⁴

A number of ordinances provide an exception to the prohibition if a majority or more tenants approve the conversion.⁵ The District of Columbia exempts luxury or high rent units from the vacancy rate bar.⁶

CONDOMINIUM CONVERSIONS IN HAWAII

C. CONVERSION QUOTA LIMITATIONS

Quota ordinances may limit conversions to a certain annual percentage of the rental stock.⁷ In Walnut Creek, California, conversions are limited to 5 per cent of the city's potentially convertible rental stock in any one year.⁸ Palo Alto and Montclair, California, define the number of vacant units in excess of 3 per cent as a "vacancy surplus" and permit conversions which do not exceed the vacancy surplus plus 40 per cent.⁹

Other quota ordinances provide an annual numerical limitation to the number of conversions. San Francisco, for example, sets the maximum number of units which may be converted to 1,000 units.¹⁰

D. NEW RENTAL HOUSING CONSTRUCTION LIMITATIONS

Some ordinances have formulas which permit a limited number of conversions upon the addition of new rental stock. In La Mesa, California, the maximum number of units which may be annually converted is 50 per cent of the yearly average number of apartments constructed in the previous 2 years.¹¹ Mountain View, California, requires the production of an equal number of rental units, unless a majority of tenants agree to purchase, and limits annual conversion to 5 per cent of total units.¹² For conversions of 5 or more units in Oakland, California, the developer must show that the developer added a new rental unit for each unit converted.¹³

In Marin County, California, and Vail, Colorado, conversions may be denied if the ratio of multi-family rental units would be reduced to less than 25 per cent of the total number of dwelling units, with no replacement housing being provided.¹⁴

E. DISCRETIONARY GOVERNMENTAL APPROVAL

Local agencies in a number of localities have discretionary authority to make a case-by-case decision on which buildings may convert. The planning commission is the usual agency given this power to approve or disapprove conversions based upon statutory criteria including the effect on or need for low- and moderate-income housing,¹⁵ the rental market,¹⁶ the general health and welfare of the community,¹⁷ displacement effects on tenants,¹⁸ and the supply of alternative types of housing.¹⁹

Chapter 7

PROTECTION OF LOW- AND MODERATE-INCOME HOUSING

A small number of communities have provisions to preserve or enhance the supply of low- and moderate-income housing.¹

A. SET-ASIDE REQUIREMENTS

Some ordinances require converters to set aside a specific number of units for low- and moderate-income rental or homeownership. In Marin County, California and Vail, Colorado, the Planning Commission may require that a reasonable percentage of converted units be reserved (for sale in Vail) for persons of moderate income.²

In Orange County, California, when there are less than 25 per cent of rental units classified "affordable" in an area in which "affordable" rental units are to be converted, at least 25 per cent of the units for sale must be reserved as affordable units.³ San Francisco requires that the higher of 10 per cent of the units or the number of existing low- or moderate-income units be set aside for low- and moderate-income rental or purchase when converting a building with 5 or more units.⁴

B. REPLACEMENT REQUIREMENTS

Other ordinances require converters to provide newly constructed low- and moderate-income units, or contribute to a public fund to be used for furthering low- and moderate-income opportunities. Los Angeles requires \$500 per unit be paid to the city for development of low- and moderate-income rental housing.⁵ Los Angeles County and Oceanside, California, require 1 and 2 per cent respectively, of the purchase price of each unit be deposited into a fund for the development of low-income housing.⁶ As an alternative to set-aside requirements in San Francisco, the converter may construct an equal number of units for low- and moderate-income rental or homeownership, or pay an amount set by formula into a housing development fund.⁷

Chapter 8

PROTECTION FOR PURCHASERS

HAWAII

Hawaii appears to adequately protect purchasers of condominium conversion units since the statutes provide almost all the protection that is afforded purchasers in the majority of states providing protection for purchasers.¹ Provisions protect purchasers of both new and converted condominiums, with additional protection in the case of conversions.

An abstract from the developer to all prospective initial purchasers is required to disclose estimated annual maintenance fees for each unit, updated every year; and a description of warranties or a statement that there are none.² Further protections for all condominium unit purchasers include an escrow account for sales moneys paid by purchasers prior to issuance of a final public report,³ which the purchaser must have an opportunity to read before the sales contract is enforceable, with a right to refund if the final report differs in any material respect from the preliminary report,⁴ or if it is not issued within 1 year of the preliminary report.⁵

Additional disclosure requirements for residential apartments at least 5 years old being converted to condominium include a list of any violations of building codes or municipal regulations and the cost to correct them, and a statement based upon a report by an independent architect or engineer as to the condition of structural, mechanical, and electrical components, along with an estimate of useful life or that no representation is made as to useful life.⁶

PART III

CONSTITUTIONALITY OF APPROACHES TO CONDOMINIUM CONVERSION REGULATION

This Part discusses various constitutional issues that may arise from the different approaches to limit, restrain, or regulate condominium conversions.

Chapter 9

TAKING OF PRIVATE PROPERTY

Condominium conversion regulations which prevent landlords from selling individual apartments, or which control or slow the process of conversion, may raise a question concerning the unconstitutional taking of property without just compensation in violation of the due process requirement of the 5th and 14th Amendments of the U.S. Constitution and Article 1, sections 5 and 20 of the Hawaii State Constitution. The courts have not yet ruled on the constitutionality of condominium conversion laws which prohibit conversions. Thus, analogous property regulation decisions which may be indicative of how a court might decide the issue are analyzed. Under this analysis, such conversion laws probably do not interfere with property rights sufficiently to require compensation.

In the most recent "taking" case decided by the Supreme Court, Penn Central Transportation Co. v. City of New York, the Court, in upholding New York City's landmarks preservation law, set out some factors used in deciding whether governmental action has effected a "taking".¹ The factors included the nature and extent of interference with property rights.² The Court stated that a "taking" cannot be established just by showing a denial of the ability to exploit a property interest that was previously believed available for development.³

Diminution in property value, standing alone, also cannot establish a "taking" in cases where land-use regulations, such as zoning and historic-district legislation are reasonably related to the promotion of the general welfare.⁴ The Court rejected the contention that New York City's regulation of individual landmarks is fundamentally different from zoning or historic-district legislation because the controls imposed by the law apply only to individuals who owned selected properties.⁵ The Court agreed that both historic-district legislation and zoning laws regulate all properties within an area whereas landmark laws apply only to selected parcels, but stated that the New York City law embodies a comprehensive plan to preserve structures of historic or aesthetic interest wherever they might be found in the city and thus are generally applicable.⁶

The Court considered whether the interference with the landowner's property was of such a magnitude that "there must be an exercise of eminent domain and compensation to sustain it".⁷ The Court noted that Pennsylvania Coal Co. v. Mahon⁸ is the leading case wherein a state statute that substantially furthered important public policies was held to amount to a "taking" because it so frustrated distinct investment-backed expectations.⁹ The Court stated that the New York City law did not interfere with the parcel's present uses, since it permitted continued use of the parcel precisely as it had been used in the past, and hence did not interfere with the landowner's primary expectation concerning the use of the land.¹⁰ The Court noted that it was important that the law permitted not only a profit from the property but also a "reasonable return" on the investment.¹¹

CONDOMINIUM CONVERSIONS IN HAWAII

Applying the "takings" clause analysis of Penn Central to laws which prohibit condominium conversions, any diminution in property value and the denial of the ability to exploit a previously held belief of availability for conversion, which results from a comprehensive plan of conversion regulations reasonably related to promoting important public interests within the police power, such as coping with tight rental markets, probably does not constitute a "taking" as long as the laws do not frustrate distinct investment-backed expectations. Landlords may continue to use their property as in the past, as rental property, for as long as the landlord chooses, and then sell it for continued use as rental property, and receive a fair return.

For conversion regulations that operate only to control or slow the process of conversion there is an even weaker argument that the landowner's ability to reasonably use, economically operate, or dispose of apartment holdings is completely or almost completely frustrated. In Grace v. Town of Brookline a conversion ordinance which slowed the conversion process by prohibiting the eviction of tenants for 6 months from rent-controlled apartments was held not to constitute a taking.¹² The Massachusetts Supreme Judicial Court, citing Penn Central's factor of the character of governmental action, analogized the ordinance's restriction to rent and eviction control laws which have been held to be a permissible exercise of police power.¹³ The Court stated that the ordinance only limited property owners' rights to remove units from the rental market, by delaying recovery for personal occupancy, and that this period of delay did not render the provisions confiscatory.¹⁴ In reaching its decision, the court was especially mindful that the properties were not rendered worthless since the law permitted the condominium purchaser to take possession eventually and since the purchaser had a right to receive a fair rent until the tenant vacates.¹⁵

Thus, although the exact contours of a "taking" remain vague, the deprivations imposed by conversion restrictions seem insufficient to require compensation.

Chapter 10

EXERCISE OF POLICE POWER

Laws which regulate condominium conversions may be challenged on the ground that they exceed the state's police power, denying due process guaranteed by the Fourteenth Amendment. States have the authority to protect the public health, safety, morals, and welfare through regulation under the police power. The police power extends, however, only to laws rationally related to a legitimate government objective.

The case law supports the exercise of police power in laws regulating condominium conversions as shown in the following discussion.

In Grace v. Town of Brookline, the Supreme Judicial Court of Massachusetts upheld 6-month limitations on the eviction of tenants in rent-controlled buildings being converted to condominiums as a justifiable exercise of the police power.¹ The Court noted that rent control statutes have consistently been upheld by the U.S. Supreme Court as proper exercises of police power in times of public emergency. The Massachusetts court noted that the import of these cases was that a shortage of housing threatens the public interest, and legislation which preserves the rental market for low-, moderate-, and fixed-income persons promotes health, safety, and welfare generally.²

In Reiner-Kaiser Associates v. McConnachie, restrictions on converters' conversion rights by a New York City law providing senior citizens an exemption from eviction in conversions where 35 per cent of the tenants agree to purchase was held by the civil court of New York City to be a constitutional exercise of police power, since the regulation was a rational and reasonable way to protect senior citizens from the effects of a critical housing situation.³

In Rockville Grosvenor, Inc. v. Montgomery County, a circuit court in Maryland found that a county emergency ordinance requiring condominium developers converting rental housing to reimburse low-income displaced tenants for moving expenses, was not violative of substantive due process, since it was not arbitrary, oppressive, or unreasonable. The court further found that there was a minimum relationship between the public welfare and the county's exercise of its police power despite the adverse effect on property rights.⁴

Cases finding a legitimate exercise of police power in the context of rent control⁵ offer a close analogy since both the purpose of conversion regulations and the degree to which they intrude into the sphere of private property are similar to rent control. In rent control laws the state has a legitimate interest in assuring adequate housing, and restricting the rent a landlord can charge is a reasonable way to promote that interest. The same reasoning should uphold most condominium conversion laws as legitimate

CONDOMINIUM CONVERSIONS IN HAWAII

exercises of the police power, since they too limit a landlord's return on investment to control the cost of rental housing.

Chapter 11

PROCEDURAL DUE PROCESS

A potent constitutional objection to conversion regulations, which permit conversions with tenant approval, is that the regulation delegates government power to interested private parties, thereby denying landlords their Fourteenth Amendment right to procedural due process.

In this area "legislative acts" must be distinguished from "administrative acts". All rational legislative acts within the police power satisfy the procedural requirements of the Fourteen Amendment.¹ "Administrative acts" must offer affected persons "meaningful" safeguards including notice, a hearing, and an impartial adjudicator who gives reasons for the decision.²

Laws which provide proceedings to obtain tenant consent to conversions are administrative.³ The decision-making power is given to tenants, whose decision affects the landlord. Thus, tenant approval laws delegate responsibility for an administrative act and the affected landlord is entitled to procedural due process safeguards. The safeguard of an impartial adjudicator is very arguably not met since the decision is delegated to tenants who are directly concerned with and affected by the outcome.

United States Supreme Court cases on laws which delegate land use decision-making power to adjoining landowners can be interpreted to establish a standard barring delegations of power to restrict property use to self-interested parties, with perhaps an exception for those land uses which present an immediate, localized threat to safety and decency.⁴

Although there have been no cases on this type of conversion regulation, this standard imperils regulations that condition condominium conversion upon tenant approval since such laws delegate the decision to tenants by requiring their consent.

Chapter 12

EQUAL PROTECTION

Laws regulating condominium conversions may raise a question concerning whether there is a violation of the federal and state constitutional right to equal protection because they single out developers or owners who wish to convert their property to condominiums. In order to find a violation of equal protection, the complainant must prove that the law lacks a rational foundation or a legitimate basis and constitutes invidious discrimination. Such an argument might be advanced where the law is directed solely toward condominium conversions (and leaves cooperative conversions wholly unregulated), or where the law is restricted in its operation to certain types of residential real property (as, for example, buildings containing 30 or more units).

The courts, however, allow a wide latitude of action to legislative bodies in remedying social problems. Since condominium conversions are the most common place type of conversions, a local determination to address this form of conversion first (or exclusively) would be difficult to overturn. The same could be said of laws that apply only to the larger buildings, since conversion of larger buildings would have the greatest impact in tenant displacement in a tight housing market.

The following cases support the constitutionality of condominium conversion laws in the context of equal protection.

In Reiner-Kaiser Associates v. McConnachie, the Civil Court of New York City upheld New York City's law providing a senior citizen exemption from eviction in buildings being converted.¹ The court found that the legislation was rational and reasonable and any discrepancies in treatment which resulted did not amount to a denial of equal protection of laws under federal and state constitutions.

In Grace v. Town of Brookline, the Supreme Judicial Court of Massachusetts held that a conversion ordinance did not violate equal protection rights of condominium developer, owner, and potential condominium purchaser because the classification rationally furthered the purpose of rent and eviction control.² The ordinance prohibited eviction of tenants from rent-controlled apartments being converted by condominium purchasers for 6 months and by condominium conversion developers.

In Rockville Grosvenor, Inc. v. Montgomery County, a circuit court in Maryland held that a county emergency ordinance requiring condominium developers converting rental housing to reimburse low-income displaced tenants for moving expenses did not violate equal protection.³ It was contended that the ordinance violated equal protection since landlords converting condominiums were burdened with a requirement not imposed on landlords not seeking to convert. The court found that there was no distinction among condominium converters in the county since all had the same

CONDOMINIUM CONVERSIONS IN HAWAII

burden imposed and that there was a reasonable basis for the classification between converting landlords and non-converting landlords.

In Goldman v. Town of Dennis, the Supreme Judicial Court of Massachusetts held that an ordinance prohibiting the conversion of any nonconforming cottage colony (group of small summer vacation homes) to condominium ownership unless the lot met certain zoning requirements did not violate equal protection.⁴ It was contended that the ordinance unlawfully discriminated between a cottage colony and a motel. The Court reasoned that equal protection does not prohibit different treatment when there is a rational basis for those differences reasonably related to the purposes which the regulation seeks to accomplish.⁵

Chapter 13

LOCAL GOVERNMENT REGULATIONS

With appropriate enabling legislation a county or municipality may legislate provisions applying within its jurisdiction that are similar in nature to what may be enacted at the state level under the state's police power. Legislative findings of public need, establishment of goals, and delegation of regulatory authority to municipalities are presumptively valid and thus are rarely overruled by the courts.

Local legislation may be invalid, however, if preempted or in conflict with state legislation or policy. A number of local ordinances in Florida and New Jersey which expressly or effectively imposed moratoria on conversions, or provided for or extended a period of non-eviction of tenants in buildings undergoing conversion have been held invalid.¹ They were found to be invalid since the field of regulating condominium conversions had been preempted by a state condominium act, which the state legislature intended to be the exclusive source of law regulating conversions, which established a state policy of permitting the creation of condominiums, or because the ordinance was in conflict with a state condominium act.

On the other hand, there have been decisions upholding local regulation of condominium conversions.² In Grace v. Town of Brookline, the Supreme Judicial Court of Massachusetts upheld limitations imposed upon eviction of tenants in rent-controlled buildings being converted.³ Brookline's law was enacted pursuant to a state statute granting to that town specific authority to regulate rents and evictions of tenants in rent-controlled apartments. Plaintiffs contended that Brookline's law exceeded the scope of state delegation and relied on Zussman v. Rent Control Board.⁴ In Zussman, the Supreme Court Judicial Court of Massachusetts had struck down a city's emergency conversion ordinance preventing the condominium conversion of rent-controlled units because it conflicted with the state condominium statute whose purpose was to provide for condominium ownership.⁵ The Court in Grace distinguished Zussman by noting that the purpose of the enabling statute for Brookline was to enable Brookline to confront its housing difficulties, and the policy of encouragement of home ownership was not present in the enabling statute.⁶

Thus, local regulations cannot attempt to regulate in an area already regulated by state statute unless the local regulation is simply an enlargement of the state statute pursuant to state enabling legislation.

Chapter 14

MORATORIA

Moratoria on condominium conversions which prohibit any further conversions of apartments to condominiums during a specified time period have usually been imposed at the municipal level of government. Thus, considerations of possible preemption by conflicting state legislation must be kept in mind. A discussion of other requirements for a moratoria to withstand constitutional challenge follows.

Moratoria should be of temporary duration. Most local ordinances imposing moratoria have been of short duration, averaging from 1 to 6 months.¹ The brevity of the time span is likely to make court challenge difficult to mount in time, much less succeed.² Short-term moratoria have been enacted in a series, but there should be an independent legislative finding to support each of the successive moratorium.³

Moratoria must be related to a legitimate purpose.⁴ Some municipalities employ moratoria as a stop gap while considering more comprehensive and permanent regulation,⁵ or to give the local legislative body time to study the situation and formulate a reasoned response to housing problems occasioned by an upsurge of residential conversion,⁶ or until the rental stock exceeds a legislatively determined percentage.⁷

This legitimate purpose often takes the form of a preceding declaration of emergency in rental housing.⁸ There is a need for a real emergency and declaration of it following ordinary and proper procedures. For example, in the case of District of Columbia v. Washington Home Ownership Council, Inc., the court found that the District of Columbia circumvented ordinary procedures regarding the adoption of an emergency moratorium by unjustifiably declaring the condominium conversion problem to be an emergency when it was not.⁹ The court ruled that the council's emergency powers could only be used in the case of a true emergency and that it was not confronted with one in this case. Similarly, in Chicago Real Estate Board v. City of Chicago, the U.S. District Court held a temporary moratorium ordinance prohibiting conversions for 40 days in buildings containing 30 or more units to be an unconstitutional deprivation of property without due process since there was no showing of circumstances warranting the deprivation.¹⁰ The Court emphasized that the City recognized that it had inadequate data, that the ordinance had "not been based on any definitive study by the City, or anyone else, which delineates the true dimension of the problem which the ordinance tries to meet". Although this ruling ended the moratorium in Chicago, it did not prevent other "emergency" moratoria later in the year in the District of Columbia, Philadelphia, and elsewhere. All of these moratoria called for, and were not based on a thorough study or analysis of the problem.¹¹

SUMMARY OF PART III

In order to meet the constitutional requirements of substantive due process and equal protection, laws regulating condominium conversions must be rationally related to the achievement of legitimate government objectives. Legitimate government objectives are those within the state's police power, to regulate for the public health, safety, and welfare. An example of a legitimate objective would be to retain rental housing if there is a shortage or impending shortage of such housing. For most laws which slow or control the conversion process, a statement of the legislature's policy objective that is within the police power should be sufficient. If the law completely prohibits conversions, however, as in moratoria or until a certain rental vacancy rate is reached, then a more extensive and substantial declaration of a rental housing emergency is advisable. Moratoria should additionally be of brief duration. That is, to avoid unconstitutionality as a violation of due process, the greater the deprivation of landlords' or converters' property rights, the greater the need for justification. Thus, for example, in statutory tenancies, a temporary tenancy probably is stronger constitutionally than a permanent life tenancy.

Although there is no case law as to whether tenant approval legislation is a denial of procedural due process, such legislation appears questionable as it may be an unconstitutional delegation of state power to the tenants.

If the state wishes to allow local governments the freedom to legislate to meet individual local needs, the local legislation must meet the same constitutional requirements applicable to state regulation. In addition, there is the requirement of proper state enabling legislation and policy, which delineates the scope of permissible local regulation.

PART IV

SUMMARY OF FINDINGS AND RECOMMENDATIONS

Chapter 15

SUMMARY OF FINDINGS

A. RENTAL VACANCY RATE IS A GOOD INDICATOR OF A RENTAL HOUSING "CRISIS"

This study was conducted pursuant to House Resolution No. 26, H.D. 1, which assumes the existence of a "rental housing crisis" in Hawaii, both in terms of rental availability and rental costs. The Resolution assumes that this "crisis" is due to the boom in condominium conversions, low vacancy rates, and increasing rental costs. It also states that it is especially the low- and moderate-income families that are adversely affected by this rental housing crisis.

Whether there indeed exists a "rental housing crisis" presently in Hawaii is not known, although it is widely believed that there is an affordable rental housing problem in Hawaii. A good indicator as to whether a problem exists in terms of rental availability is the rental vacancy rate. The rental vacancy rate also appears to be the most accurate indicator of the potential for a conversion "crisis".¹ The U.S. Department of Housing and Urban Development's economic and analyst division finds that a normal rental vacancy rate, characteristic of a healthy housing market, is at least 5 per cent.²

The only data available on rental vacancy rates for Hawaii is the U.S. Bureau of Census' "Annual Housing Survey" for Honolulu, Standard Metropolitan Statistical Area (SMSA), in 1970 and 1976.³ The rental vacancy rate for Honolulu, SMSA, or Oahu was 4.7 per cent and 6 per cent in 1970 and 1976, respectively.⁴ Ostensibly, by this measurement, in 1970 and 1976, Oahu had no rental crisis in terms of availability of rental units. These rental vacancy rates include, however, vacant condominiums available for transient or tourist rental.⁵ Thus, these percentages do not conclusively show that in 1970 and 1976 Oahu had no rental crisis in terms of availability of rental units for long-term or residential rental use.

On the other hand, the yearly "Honolulu Housing Vacancy Survey" sponsored by the Federal Home Loan Bank of Seattle and conducted by United States mail carriers is often cited for vacancy rates.⁶ It must be noted that this survey is an overall housing vacancy rate, and not exclusively a rental vacancy rate.⁷ The vacancy rates from this survey reported in March 1980 for Oahu was 2.4 per cent for "apartments" and .5 per cent for "single family detached housing units".⁸

CONDOMINIUM CONVERSIONS IN HAWAII

These rates are not exclusively rental vacancy rates because the categories of housing surveyed are overinclusive. In the surveys, housing units are divided in three types - single family detached housing, apartments (i.e., attached housing), and mobile homes.⁹ "Single family detached housing units" are defined as housing units with open space on all sides, excluding mobile homes.¹⁰ "Apartments" include any housing units attached to other units along the sides, floor or ceiling, and thus include row housing and townhouse and condominium units as well as rental apartments.¹¹ Because the "apartment" category includes condominium and townhouses which may be vacant "for sale" and not vacant "for rent", and thus not even in the rental market, the "apartment" vacancy rate is not a rental vacancy rate.

Another problem with the Survey is that it uses mail stops and not actual units. Furthermore, those communities which have performed follow-up surveys have found that this Survey has a poor correlation with actual rental vacancy rates, and that the Survey relies upon individual mail carriers who are not trained for this work and in some cases poorly supervised.¹² In addition, this survey is limited to Oahu.

B. DETRIMENTAL CONSEQUENCES OF CONDOMINIUM CONVERSIONS

The assumption that condominium conversions decrease the availability of residential rental housing appears to apply to Oahu where analysis of the data collected showed a 29 per cent reduction in the residential long-term rental inventory.¹³ This 29 per cent reduction only applies to those units that were converted, and not the entire Oahu rental pool. As noted before, however, this percentage should be reduced by an unknown percentage representing former renters who became owner-occupants, thereby reducing renter demand.¹⁴

Rent levels are increasing in Hawaii.¹⁵ This study does not have data comparing the rent price of units before and after conversion to show whether or not conversions in Hawaii result in increasing rent. Under basic supply-demand economic analysis, however, it is probable that rents may be increasing due at least in part to this depletion of rental units. Also it is likely that the rent of converted units owned by investors is higher than it was prior to conversion.¹⁶

These consequences of condominium conversions are deleterious to the supply of affordable rental housing. An adequate supply of affordable rental housing is important in Hawaii, where the majority of the population are renters, and affordable homeownership opportunities are lacking to most first-time home buyers, especially the fastest growing segment of the population and prime home-buying age group, the maturing baby-boom generation.¹⁷

The increasing rate of conversions and the recent trend towards conversion of smaller buildings on Oahu probably is resulting in the displacement of the low- and moderate-income and needy elderly tenants on Oahu more than in the past.¹⁸

SUMMARY OF FINDINGS

C. BENEFICIAL CONSEQUENCES OF CONDOMINIUM CONVERSIONS

Conversions on the neighbor islands have apparently been beneficial since housing available for long-term rental, and thus residential use, has increased 5.6 per cent by conversions.¹⁹ This 5.6 per cent increase only applies to those units that were converted, and not the entire neighbor island rental pool. All counties benefit from conversions by the increased revenues derived from the higher real property tax assessments of individually owned and possibly improved condominium units.²⁰ Converted condominium units also offer additional and more affordable alternatives to those seeking the benefits of homeownership.²¹

D. CONDOMINIUM CONVERSIONS RESULT IN BOTH FURTHERANCE AND HINDERANCE OF THE STATE'S HOUSING POLICIES

The Hawaii State Planning Act sets out objectives and policies for housing in Hawaii.²² These policies include increasing homeownership and rental opportunities and choices in terms of quality, location, cost, densities, style, and size of housing; stimulating and promoting feasible approaches that increase housing choices for low-, moderate-, and gap-group income households; effectively accommodating the housing needs of Hawaii's people, especially the elderly, handicapped, displacees of redevelopment areas, and newly formed households; and promoting appropriate improvement, rehabilitation, and maintenance of existing housing.

Condominium conversions in Hawaii could be said to both promote and hinder these housing policies. Conversions result in increasing homeownership opportunities in terms of costs and promote improvement, rehabilitation, and maintenance of existing housing. Because of the 5.6 per cent (of number of converted units, not entire rental pool) increase to long-term residential rental housing on the neighbor islands, it could be said that conversions result in increasing rental opportunities and stimulating and promoting housing choices for some of the low-, moderate-, and gap-group income households on the neighbor islands. On the other hand, because of the 29 per cent (of number of converted units, not the entire rental pool) reduction to the long-term residential rental housing on Oahu, it could be said that conversions do not result in increasing residential rental opportunities, nor promote housing choices for low-income households on Oahu.

E. LAWS REGULATING CONDOMINIUM CONVERSIONS IN HAWAII AND ELSEWHERE

The Resolution requests an analysis of various approaches to regulate condominium conversions, including approaches aimed at protecting tenants of buildings undergoing conversion and protecting the rental market itself.

CONDOMINIUM CONVERSIONS IN HAWAII

Hawaii does not have any laws that specifically protect the rental market. Statutes in Hawaii affording protection to tenants provide that (1) month-to-month and rental agreement tenants are entitled to 90 and 120 days' notice, respectively, of termination of tenancy;²³ (2) tenants are effectively given at least 6 weeks notice through newspaper publication of their right of first refusal and in which to conditionally, exercise this right;²⁴ and (3) landlords must give tenants at least 2 days notice of intent to enter the unit in order to make necessary or agreed repairs, decoration, alteration, improvements, or to exhibit the dwelling to prospective purchasers.²⁵

The most prevalent form of state legislation providing protection to tenants is a 120-day notice of the intent to convert, coupled with a guaranteed minimum tenancy period, during which tenants may not be evicted except for cause and during which the terms of the tenancy may not be changed. A few states and some localities provide extended notice or eviction periods for special classes of tenants, such as the elderly and handicapped. A common statutory provision gives tenants the first right of refusal, usually lasting 60 or 90 days, measured from after the notice of intent to convert or vacate, issuance of final public reports, or commencement of sales. A few states require converters to provide relocation information, services, or payment of moving expenses to tenants; give tenants the right to cancel existing leases after having received notice of the impending conversion and having given notice to the landlord; or prohibit harassment of tenants before or during the conversion process. Only a few localities require tenant approval or consent to conversion.

Practically all the laws aimed at protecting the rental market have been enacted at the local level of government. These laws include moratoria on condominium conversions; prohibition of conversions when the rental vacancy rate falls below a level considered to represent a stable rental market; a quota system on the annual number of conversions allowed; a formula system tied to the production of new rental housing; and discretionary authority to approve or disapprove specific conversion projects in a local planning agency.

F. SOME CONSTITUTIONAL REQUIREMENTS OF LAWS REGULATING CONDOMINIUM CONVERSIONS

Laws regulating condominium conversions must be rationally related to the achievement of legitimate government objectives. An example of legitimate government objectives within the state's police power are the objectives in the State Planning Act. The greater the deprivation of private property rights, the greater the need for government justification for any such law. Thus, a declaration of a rental housing emergency is advisable in enacting laws which have the effect of prohibiting conversions. Tenant approval or consent to convert legislation do not appear to be advisable since this type of legislation may be an unconstitutional delegation of state police power.

Proper enabling legislation and policy, which delineates the scope of permissible local regulation, is necessary if a state wishes to allow local governments the freedom to regulate condominium conversions.

Chapter 16

RECOMMENDATION

A. PROTECTION OF THE RENTAL MARKET

A major concern regarding the conversion of rental apartments to condominiums is the potential depletion of the supply of affordable rental housing for residents. As shown in this study, condominium conversions both increase and deplete the supply of residential rental housing, depending on what was converted and the use of the condominiums after conversion. As has also been shown, the types of buildings, rate of conversions, and the use of the converted units fluctuate. In addition, there have been other benefits and detriments from conversions aside from affecting the supply of residential rental units. Thus, flexible legislation is recommended which will permit conversions when they are beneficial and limit them when they are detrimental to Hawaii and its residents.

Rental Vacancy Rate Approach Recommended

State legislation which determines at what point a rental housing crisis or emergency is deemed to exist, and a limitation on further condominium conversions while this emergency exists is recommended. A rental vacancy rate approach is recommended because it is an accurate indicator of the potential for a rental housing crisis resulting from conversions. It also is flexible in allowing conversions when the rental market can bear it or benefit from it, but restricting them when there is a too low vacancy rate.

The legislation should provide that the legislature finds and deems a "rental housing emergency" to exist in a county when the county's rental vacancy rate (as defined) is 3 (or 4 or 5) per cent or less, and that no further conversions will be allowed, except for hotels and apartment-hotels, while this "emergency" continues to exist. These rental vacancy rate percentages are recommended because they are the most commonly used levels in different jurisdictions which have enacted this approach to protecting the rental market. Prohibiting conversions if the rental vacancy rate is 3 per cent or less is the least restrictive, and 5 per cent or less is the most restrictive on condominium conversions among the suggested percentage levels. The exception allowing conversions of hotels and apartment-hotels while there is an "emergency" is because conversion of these types of structures do not adversely affect the residential rental housing supply.

Determining the Rental Vacancy Rate

The rental vacancy rate should exclude rental properties intended for transient or tourist rental because of the large number of short-term rental units available for tourist-use in Hawaii, and because the focus of concern is

CONDOMINIUM CONVERSIONS IN HAWAII

on the availability and cost of rental units for residents of Hawaii. Military-controlled units should also be excluded for similar reasons. Civilian government-owned units, under the control of the Hawaii Housing Authority should also be excluded. The Hawaii Housing Authority could provide a rental vacancy rate in these units if so required. Rental vacancy rates should be determined semi-annually because of the fluctuating nature of the rental housing supply and because any resulting prohibition on conversions from a too low vacancy rate should last only as long as there actually is a too low vacancy rate, but should also recognize the administrative need for sufficient time to determine the rental vacancy rates. The rate should be calculated for each county because of the differing consequences of conversions which have been found to exist in the different counties.

Because there is no such rental vacancy rate information available or presently calculated, a state or local government agency, such as the State Department of Health, should be mandated to make these semi-annual county-wide determinations. The Department of Health is suggested because it presently has an ongoing Hawaii Health Surveillance Program calculating total vacancy rates in the State each quarter.¹ Their door-to-door survey is based on a sample design which could be expanded and modified to accommodate the suggested rental vacancy rate criteria.² Additional funding to the Department would be needed for this expansion and modification. It should be noted that if a county or the several counties are required to calculate their own rental vacancy rates, Article VIII, section 5, of the Hawaii Constitution requires the State to share in the cost of the program.

Alternative Recommendation: Delegation to the Counties

An alternative recommendation is to enact enabling legislation which delegates responsibility and authority to protect the rental market from adverse consequences of condominium conversions to the counties. The enabling legislation should include a statement of legislative intent or purpose to promote the retention of rental housing in Hawaii. This alternative would give the individual counties the option to enact any type of ordinance regulating condominium conversions in order to protect the rental market, if they find a need to so protect it.

This alternative is suggested because the study indicates that the problem of depletion of residential rental housing by condominium conversions has been limited to Oahu, whereas the neighbor islands have had their supply of residential rental housing augmented by conversions. Thus, the administrative burden and cost of mandating calculation of rental vacancy rates for each county may not seem justifiable. An argument against this, however, is that although condominium conversions may not presently be depleting residential rental housing on the neighbor islands, there may nonetheless be a rental housing problem or potential for one which could be uncovered by rental vacancy rate determinations in these neighbor island counties. As noted earlier, most of the mainland jurisdictions that have enacted laws regulating condominium conversions to protect the rental market are at the municipal or county level of government.

RECOMMENDATION

B. TENANT PROTECTION

Hawaii presently has laws protecting tenants of buildings undergoing conversion. Some jurisdictions have additional or other laws protecting tenants. Whether Hawaii's laws should be amended to provide additional protection to these tenants is not clear because of a lack of data showing that there is a "rental housing crisis" or that tenants are suffering unjustifiable adverse consequences that could be prevented by appropriate legislation. Thus, the following proposed amendments which strengthen present laws protecting tenants are presented for legislative consideration, either as an alternative to the recommended rental vacancy rate approach or as additional measures.

Notice of Termination of Tenancy

The law that provides a 90- or 120-day notice period for termination of month-to-month and rental agreement tenants, respectively, should be clarified by providing that tenants may not be evicted without cause and the terms of the tenancy may not be changed during this notice period. The purpose of this amendment is to ensure that the notice and eviction requirements are not circumvented either through actual eviction without cause or constructively through landlord actions.

Tenants should be allowed to terminate their rental agreements early without penalty, after having received notice of the termination of their tenancy due to conversion, and having given their landlord 30 days' written notice of their early termination. The purpose of this amendment is to increase tenants' options to move out earlier after having received notice of termination, in order to avoid paying double rent if new housing accommodations have been found.

Some jurisdictions extend the notice period for elderly and handicapped tenants or tenants with minor children in order to give them additional time that they may need to relocate. A few jurisdictions even provide for life tenancies for the elderly. In Hawaii, the present 3- or 4-month notice period appears to be a reasonably sufficient length of time to accommodate relocation needs. The legislature may, however, wish to consider extending the notice period for such special classes of tenants to 6 months. Life tenancies, on the other hand, do not seem advisable unless there is substantial justification for it because of the greater deprivation to private property rights that life tenancies entail.

Right of First Refusal to Purchase the Unit

Developers should be required to give existing tenants the same written notice and at the same time as is presently required of developers by section 514A-102, Hawaii Revised Statutes. This section requires developers to publish in a newspaper at least twice in each of 2 successive weeks prior to

CONDOMINIUM CONVERSIONS IN HAWAII

notifying the Real Estate Commission of the developer's intent to sell a condominium, an announcement of the sale of the project, including the requirement that 50 per cent of the units will be offered for a 10-day period only to prospective owner-occupants. This proposal is to ensure that tenants who intend to become owner-occupants would in fact have personal notice, rather than notice through the classified section of a newspaper of their right of first refusal. It would also inform them of who to contact for further information or for placement on the broker's reservation list. It may be argued that this written notice to tenants is unnecessary since the Department of Regulatory Agencies' rules presently require landlords to include in their notice of termination of tenancy, notice of tenants' right of first refusal.³ Hypothetically, however, it is possible that tenants may not in fact receive this notice of their right of first refusal in time to be able to exercise it, if notice of termination of tenancy and its accompanying notice of right of first refusal is given after the reservation list period has lapsed and if tenants missed the newspaper announcements.

Right to Quiet Enjoyment

There should be a clarification of the timing and extent of allowable alterations and remodeling of units, done for the purpose of converting units to condominium. Under present statutory law, it is not clear whether alterations or improvements to units undergoing conversion are considered "necessary". If they are "necessary", the tenant must allow landlord access to enter the unit during reasonable hours after having received a minimal 2-days notice.⁴ A tenant may be liable to the landlord for any damage proximately caused by tenant's unreasonable refusal to allow such access.⁵ On the other hand, the landlord may be assessed a fine not to exceed \$100, and the tenant may have a right to terminate the rental agreement in the event of repeated demands by the landlord for unreasonable entry, or for unreasonable and not consented to entry by the landlord.⁶ Clarification of the law is suggested to avoid unnecessary litigation by clearing up the rights of the tenant and landlord in such situations. Such amendments could also promote the health and safety of tenants.

Suggested alternatives for legislative consideration which would limit the timing of alterations or remodeling done on units for conversion purposes include (1) prohibiting such alteration or remodeling for 30 days after issuance of the preliminary public report; or (2) disallowing such alteration or remodeling until tenant vacates or purchases the unit. Alternatives (1) and (2) may be modified to allow such alteration or remodeling if tenant consents.

C. CAVEAT ON THE STUDY AND AREAS FOR FURTHER STUDY

A number of trends and findings have been inferred from the data collected in this study. A caveat must be added that these are of course based on past conversion activity, through July 22, 1981. These trends include the trend towards conversion of smaller projects; increasing rate of

RECOMMENDATION

conversions on Oahu; and the trend towards decreased owner-occupancy of converted units on Oahu, which data was limited to conversion through 1979; as well as the findings as to the percentages of increase and reduction to residential rental housing (of converted units) on the neighbor islands and Oahu. Changes in market activity in the last half of 1981 are not included. During this last half of 1981, changes have occurred including a downturn in the real estate market, which includes the condominium market, as a result of rising interest rates, recession, and other factors. Only 25.6 per cent of the Oahu condominium units listed in the Multiple Listing Service were sold in 1981.⁷ These changes may or may not be permanent because of outside market and economic forces that at this stage may be neither controllable nor predictable. Thus, it must be kept in mind, when considering the trends and findings in this study, that they are past trends and findings, and not necessarily applicable today, nor will they necessarily continue into the future.

Also, certain data was not available for this study because to obtain such data, in the time allotted for the completion of the study would require additional personnel and expenditures not provided for. An attempt was made to conduct a survey of converted condominium buildings to ascertain whether present occupants were owner-occupants or renters, and what happened to previous tenants by working with students from the University of Hawaii course on Social Policy Analysis, taught by Professor Oscar Kurren of the School of Social Work. It was discovered, however, that without a considerable number of persons willing to undertake a door-to-door survey, the survey that could be conducted by available students would involve a sample that would have been too small from which to develop significant generalizations.

Thus, because of the changing nature of the real estate market and areas in which data are lacking, it is possible that more definitive conclusions could be drawn if data were obtained in the following areas:

A. Rent

- (1) Comparisons between pre- and post-conversion rents on converted units to determine the extent of rent increases, if any, and affordability.
- (2) Rent levels of prior hotels and apartment-hotels that have been converted and are available for long-term rent, to determine affordability.

B. Rental Housing Supply

- (1) Percentages of previous tenants who bought converted units or units elsewhere and became owner-occupants, thereby reducing demand for rental housing.
- (2) Number of "paper" converted condominiums in part motivated by the threat of prohibitions on

CONDOMINIUM CONVERSIONS IN HAWAII

conversions, that have not been sold by converters since conversion, and thus have had no real impact on the rental market, and which may be contributing to the decreasing rate of owner-occupancy of converted units.

- (3) Owner-occupancy levels of units converted since 1979 and changes in owner-occupancy of units converted prior to 1980.
- (4) Changes in short-term versus long-term rental availability of converted units located in resort areas, as changes in strength of the tourism industry occurs.
- (5) Whether the trend towards an increasing rate of conversions on Oahu is continuing, leveling off, or declining.

C. Displacement

- (1) Percentages of previous tenants who leave converted buildings, i.e., neither buy converted units nor remain as tenants, to determine the degree of displacement.
- (2) Percentage of displaced tenants who are elderly, or low- or moderate-income tenants.
- (3) Whether the trend towards conversion of smaller buildings is continuing, leveling off, or declining.

D. Special Tenant Protection

- (1) Determine if any mainland studies have found there to be reverse discrimination in renting occurring by landlords against special categories of tenants, such as the elderly, handicapped, or tenants with minor children, where laws provide for increased protection to these categories of tenants, by landlords knowing that they would be more difficult to displace.

FOOTNOTES

Chapter 1

1.

NEW AND CONVERTED CONDOMINIUM INVENTORY

<u>Year of Conversion</u>	<u>Number Converted Units</u>	<u>Cumulative Converted Units</u>	<u>Total Annual Additions to Condo Inventory</u>	<u>% Converted Units is of Annual Addition</u>	<u>Cumulative Condo Inventory</u>	<u>% Cumulative Conversion Units is of Cumulative Condo Inventory</u>
1962	-	-	182	-	182	-
1963	41	41	41	100	223	18
1964	179	220	1,557	11.5	1,780	12
1965	106	326	1,091	10	2,871	11
1966	163	489	2,061	8	4,932	10
1967	149	638	1,545	10	6,477	10
1968	113	751	2,181	5	8,658	9
1969	24	775	1,754	1	10,412	7
1970	215	990	4,908	4	15,320	6
1971	265	1,255	4,318	6	19,638	6
1972	319	1,574	2,835	11	22,473	7
1973	582	2,156	6,741	9	29,214	7
1974	349	2,505	9,275	4	38,489	6.5
1975	666	3,171	10,798	6	49,287	6
1976	829	4,000	7,357	11	56,664	7
1977	514	4,514	3,321	15.5	59,965	7.5
1978	691	5,205	3,210	21.5	63,175	8
1979	1,003	6,208	6,816	15	69,991	9
1980	1,785	7,993	10,441	17	80,432	10
1981*	1,138	9,131	-	-	-	-

*1981 data include conversions until July 22, 1981 (issue date of Horizontal Property Regime Final Public Report)

Sources: For condominium inventory total and annual additions: Bank of Hawaii, Construction in Hawaii, June 1981 (Honolulu: 1981), p. 6.

For number of converted units:
Hawaii Real Estate Commission records;
Hawaii TMK Service, Hawaiian Condominium Guide,
1980-1981 (Honolulu: 1980).

2. Ibid.

NUMBER OF CONVERSION PROJECTS AND UNITS
BY YEAR OF CONVERSION**

Year of Conversion	Number of Projects Neighbor			Number of Units Neighbor			Number of Home Exemption Claims in 1980 Neighbor		
	Oahu	Isles	Total	Oahu	Isles	Total	Oahu	Isles	Total
1963	1	-	1	41	-	41	18	-	18
1964	1	1	2	64	115	179	6	3	9
1965	4	-	4	106	-	106	61	-	61
1966	5	-	5	163	-	163	68	-	68
1967	3	-	3	149	-	149	65	-	65
1968	2	-	2	113	-	113	41	-	41
1969	1	-	1	24	-	24	15	-	15
1970	3	-	3	215	-	215	66	-	66
1971	4	-	4	265	-	265	123	-	123
1972	5	1	6	306	13	319	93	-	93
1973	8	3	11	396	186	582	112	9	121
1974	7	-	7	349	-	349	132	-	132
1975	12	1	13	576	90	666	257	3	260
1976	15	1	16	811	18	829	201	2	203
1977	6	-	6	514	-	514	56	-	56
1978	13	2	15	583	108	691	113	1	114
1979	14	4	18	784	219	1003	92	-	92
1980	47	1	48	1777	8	1785	N/A	N/A	N/A
1981*	20	2	22	1108	30	1138	N/A	N/A	N/A
Totals thru 1980	151	14	165	7236	757	7993	1519***	18***	1537***
Totals thru 7/22/81	171	16	187	8344	787	9131	-	-	-

*1981 data includes conversions until July 22, 1981 (issue date of Horizontal Property Regime final public report).

**Excludes projects with 6 or less units.

***Totals thru 1979.

N/A: Not available.

Sources: For number of projects and units and year converted:

Real Estate Commission records;

Hawaii TMK Service, Hawaiian Condominium Guide, 1980-1981 (Honolulu: 1980).

For home exemption claims:

TMK Sales Journal, Hawaiian Condominium Guide, 1980-1981, Sales/Owner's Journal (Honolulu: 1980);

Real Estate Data, Inc., Real Estate Atlas of the State of Hawaii.

- Condominium Ownership Volumes, 1980 (Honolulu: 1980);

Real Estate Atlas of the State of Hawaii - 1st thru 4th Tax Divisions

- Geographical Ownership Volumes (Honolulu: 1980).

4.

CONVERSIONS AS A PROPORTION OF THE RENTAL HOUSING SUPPLY

	Number of Units Converted 1963-1980	1980 Rental Units Public & Private Private		Percentage Converted Units is to Rental Units Public & Private Private	
Oahu	7,236	147,629	123,470	4.9%	5.9%
Neighbor Islands	757	49,158	47,509	1.5%	1.6%

Sources: For rental units:
Hawaii, Department of Planning and Economic Development, Housing
Units Estimates for Hawaii, 1970-1981, Statistical Report 148,
Table 1: renter occupied and vacant units, July 15, 1981.

For number of units converted through 1979:
Hawaii TMK Service, Hawaiian Condominium Guide, 1980-1981
(Honolulu: 1980).

5.

HAWAII CUMULATIVE CONVERTED CONDOMINIUM INVENTORY BY SIZE OF PROJECT CONVERTED

	Range of Number of Units in Conversion Projects					Percentage of Cumulative Conversion Inventory through July 22, 1981	
	<u>Less than 20</u>	<u>20-29</u>	<u>30-39</u>	<u>40-50</u>	<u>More than 50</u>	<u>Units</u>	<u>Projects</u>
Cumulative as of July 22, 1981 (1963 - July 22, 1981)							
Number of Conversion Projects	65	33	22	16	50	100%	100%
Percentage of Total Number of Conversion Projects	35%	18%	12%	9%	26%		
Cumulative as of December 31, 1979 (1963-1979)							
Number of Conversion Projects	24	26	15	11	41	68%	63%
Percentage of Total Number of Conversion Projects (Converted 1963-1979)	20.5%	22%	13%	9%	35%		
1980 and through July 22, 1981							
Number of Conversion Projects	41	7	8	5	9	32%	37%
Percentage of Total Number of Conversion Projects (Converted 1980-1981)	59%	10%	11%	7%	13%		

Sources: Real Estate Commission records;
Hawaii TMK Service, Hawaiian Condominium Guide, 1980-1981 (Honolulu: 1980).

6. See footnote 3. 68 projects were converted in 1975 through 1979; 70 projects were converted during 1980 through July 22, 1981.

7. Ibid.

8.

CONVERTED CONDOMINIUM INVENTORY
(1978)

	<u>Oahu</u>	<u>Neighbor Islands</u>	<u>Statewide</u>
Highrise	54%	6%	49%
Lowrise	37%	94%	43%
Townhouse	5%	0%	4%
Single Family & Duplex	4%	0%	4%

Definitions:

"Highrise": Structure with 5 or more floors.

"Lowrise": Structure with 4 floors or less.

"Conversions": Existing apartments or hotels which have been changed to condominium status. Figures exclude condominium office buildings, and commercial units in residential buildings.

Source: Bank of Hawaii, Department of Business Research, State of Hawaii Condominium Inventory 1962-1978 (Honolulu: 1979).

9. See footnote 3.

10. Ibid.

11. Ibid.

12. Ibid.

13. Ibid.

14. Owner-occupancy data for conversions in 1980-1981 is not complete and available. See footnote 3. "Real property owned and occupied only as his or their principal home as of the date of assessment by any individual or individuals, shall be exempt only to the following extent from property taxes...." Hawaii Rev. Stat., sec. 246-26 (1976). Note that some home exemptions may be filed on homes not owner-occupied but owned by sufferers of Hansen's disease, the blind, deaf, or totally disabled persons, who are allowed exemptions on all real property owned by them. Hawaii Rev. Stat., secs. 246-30, 246-31 (1976).

15.

LOSS OF UNITS TO RENTAL SUPPLY BY OWNER-OCCUPANCY

	1980 Rental Units		Number of Units Lost To Owner-Occupants*	Units Lost as a Percentage of Total Units	
	Public & Private	Private		Public and Private	Private
Oahu	147,629	123,470	1,519	1%	1.2%
Neighbor Islands	49,158	47,509	18	.04%	.04%

Sources: For rental units:
Hawaii, Department of Planning and Economic Development, Housing Units
Estimates for Hawaii, 1970-1981, Statistical Report 148, Table 1:
renter occupied and vacant units, July 15, 1981.

*For number of units lost to owner-occupants:
TMK Sales Journal, Hawaiian Condominium Guide, 1980-1981,
Sales/Owner's Journal (Honolulu: 1980);
Real Estate Data, Inc., Real Estate Atlas of the State of Hawaii -
Condominium Ownership Volumes, 1980 (Honolulu: 1980);
Real Estate Atlas of the State of Hawaii - 1st thru 4th Tax Division
Geographical Ownership Volumes (Honolulu: 1980).

16. See footnote 3.

17. Ibid.

18. Honolulu Advertiser, August 19, 1981; Honolulu Advertiser, August 23, 1981.

19. Ibid.

20. Converted condominium units available for transient use includes time share units. Percentages calculated from information from: Hawaii Visitors Bureau, Visitor Plant Inventory, February 1981 (Honolulu: 1981); Bank of Hawaii, Economics Division, Construction in Hawaii, June 1981 (Honolulu: 1981), p. 6; Hawaii State Real Estate Commission records; Hawaii TMK Service, Hawaiian Condominium Guide, 1980-1981 (Honolulu: 1980).

21. Compiled from information contained in Hawaii TMK Service, Hawaiian Condominium Guide, 1980-1981 (Honolulu: 1980).

22. Ibid.

Chapter 2

1. Hawaii, Hawaii Housing Authority, State Housing Plan and Technical Reference Documents (Honolulu: September, 1980), p. III-26; Locations, Inc., Hawaii Real Estate Indicators, May 1980 (Honolulu: 1980).
2. Bank of Hawaii, Economics Division, Construction in Hawaii, May 1980 (Honolulu: 1980), pp. 11, 12.
3. Ibid.
4. Ibid.
5. Pacific Business News, June 29, 1981, p. 34, citing a Housing Coalition study; Honolulu Board of Realtors, Multiple Listing Service.
6. Ibid.
7. Pacific Business News, June 29, 1981, p. 34, citing a Housing Coalition study.
8. Hawaii Business, July 1981, citing a Housing Coalition study.
9. See footnote 7.
10. Ibid.
11. Ibid.
12. Honolulu Advertiser, July 7, 1981, p. B-8.
13. Honolulu Advertiser, August 4, 1981, p. D-3
14. U. S. Bureau of the Census figure from Hawaii Housing Authority.
15. Honolulu Advertiser, July 12, 1981.
16. 1981 Haw. Sess. Law, Act 229.
17. Ibid.
18. Ibid.; Conference Committee Report 41 on Senate Bill No. 55, Eleventh Legislature, 1981, State of Hawaii.
19. "The Population of Hawaii, 1980: Final Census Results", Statistical Report 143 (Department of Planning and Economic Development, State of Hawaii, March 18, 1981), p. 2.
20. Manufacturers Hanover Trust Company, Financial Digest, August 18, 1981 (New York: 1981).

21. The total number of people who were married in 1980, more than 4.8 million, was the largest ever on record. Ibid.
22. Hawaii Housing Authority, pp. III-24, III-26.
23. Ibid.
24. Ibid.
- 25.

OAHU PRIVATELY OWNED APARTMENT AND CONDOMINIUM INVENTORY
(Cumulative as of December 31, 1977 and December 31, 1979)

<u>Year</u>	<u>Number of Apartment Units</u>	<u>Number of Condominium Units*</u>
1977	35,797	35,068
1979	36,570	38,738

*Condominiums exclude single-family, duplex, and townhouse structures that are condominiums.
"Apartment" means 1 structure with more than 2 units and more than 1 story.

Source: Department of General Planning, City and County of Honolulu.

26. See footnote 1.
27. The bulk of residential activity presently consists of condominium projects. Bank of Hawaii, Economics Division, Construction in Hawaii, June 1981 (Honolulu: 1981), p. 2. Hereinafter cited as Construction in Hawaii, 1981.
28. Locations, Inc.
29. U.S. Department of Housing and Urban Development, The Conversion of Rental Housing to Condominiums and Cooperatives (Washington: 1980), pp. V-17 - V-19.
30. Ibid.
31. Construction in Hawaii, 1981, p. 7.
32. Hawaii Housing Authority, p. III-46.
33. U.S. Department of Housing and Urban Development, The Conversion of Rental Housing to Condominiums and Cooperatives (Washington: 1980), pp. V-22 - V-23.
34. Department of General Planning, City and County of Honolulu.
35. See footnote 1.

36. Construction in Hawaii, 1981, p. 5.
37. "Reagan Housing Plans Generally Approved," Congressional Quarterly Weekly Report, August 15, 1981, pp. 1471-1473.

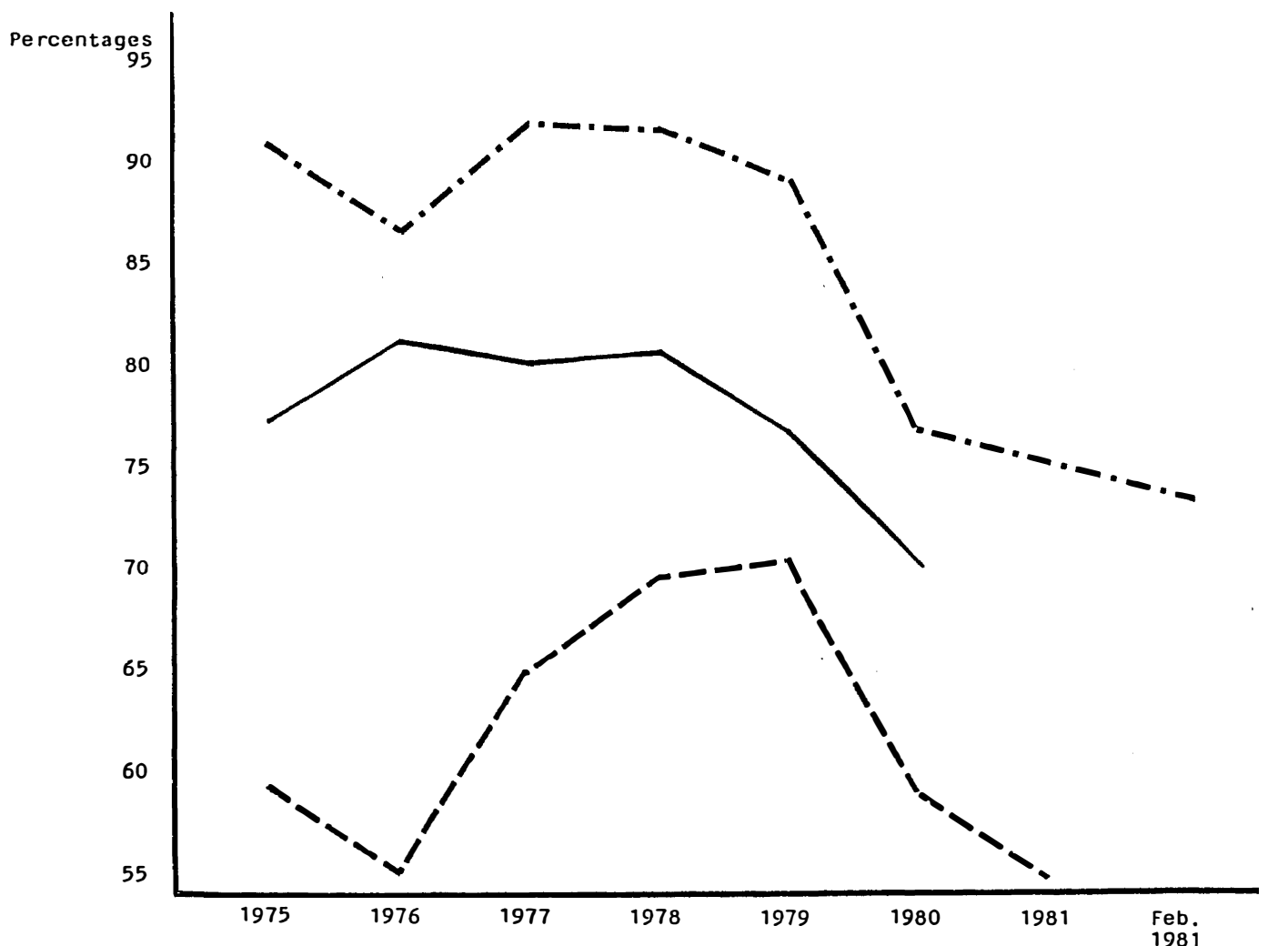
Chapter 3

1. "Long-term rental" means rental for 6 months or longer. It is considered "residential" in this study because the Hawaii Visitors Bureau data used includes in its "Visitor Plant Inventory" units in condominiums and apartment-hotels available for short-term rental of less than 6 months. The assumption is that residents do not seek housing from units listed in this Visitor Plant Inventory, which caters to tourists.

Only conversions from 1967 through 1979 were analyzed because both the Hawaii Visitors Bureau short-term rental information and owner-occupancy data, as determined from real property tax home exemption claims, was complete and available only for conversions in this time period.

2. Hawaii TMK Service, Hawaiian Condominium Guide, 1980-1981 (Honolulu: 1980).
3. Hawaii Visitors Bureau, Visitor Plant Inventory (Honolulu: 1967 through February 1981).
4. "...at the end of 1980" since Hawaii Visitors Bureau February 1981 "Visitor Plant Inventory" data are collected a few months earlier than the February publication data, Hawaii Visitors Bureau, Visitor Plant Inventory (Honolulu: February 1981); Time share units were also considered as available for short-term rental, Hawaii State Real Estate Commission records; For owner-occupancy as determined by real property tax home exemption claims: TMK Sales Journal, Hawaiian Condominium Guide, 1980-1981, Sales/Owner's Journal (Honolulu: 1980); Real Estate Data, Inc., Real Estate Atlas of the State of Hawaii - Condominium Ownership Volumes, 1980 (Honolulu: 1980); Real Estate Atlas of the State of Hawaii - 1st thru 4th Tax Divisions - Geographical Ownership Volume (Honolulu: 1980).
5. Hawaii Visitors Bureau, Visitor Plant Inventory (Honolulu: 1967 through February 1981).
6. Locations, Inc., Hawaii Real Estate Indicators, May 1980 (Honolulu: 1980); Hawaii Visitors Bureau, Visitor Plant Inventory, June 1981 (Honolulu: 1981).
7. Hawaii Visitors Bureau, Visitor Plant Inventory, February 1980 (Honolulu: 1980); Hawaii Visitors Bureau, Visitor Plant Inventory, February 1981 (Honolulu: 1981).
8. Ibid. The number of condominium buildings decreased from 64 to 39.
9. Hawaii Visitors Bureau, Visitor Plant Inventory, February 1981 (Honolulu: 1981).

SHORT-TERM RENTAL AVAILABILITY OF CONVERSION UNITS
AND HOTEL OCCUPANCY RATE



--- Percentage of condominium conversion units available for short-term rental (less than 6 months) in buildings located in Waikiki and Ala Moana area that had or have some units available for short-term rental during the 1975 to February 1981 period (excludes time share units).

— Annual average hotel occupancy rate for Waikiki.

- - - Average first 4 months (January - April) hotel occupancy rate for Waikiki. (included to show that the downturn in occupancy rate has continued in the first quarter of 1981).

Sources: For hotel occupancy rate: Hawaii Visitors Bureau, Annual Research Report 1980 (Honolulu: 1980), p. 26; for 1981 data: Hawaii Visitors Bureau interview.

For conversion units: Hawaii State Real Estate Commission records; Hawaii TMK Service, Hawaiian Condominium Guide, 1980-1981 (Honolulu: 1980).

For short-term rental availability: Hawaii Visitors Bureau, Visitor Plant Inventory, 1975 thru February 1981.

11. Ibid.
12. Ibid.
13. Ibid.
14. Locations, Inc., Hawaii Real Estate Indicators, May 1980 (Honolulu: 1980); Hawaii, Hawaii Housing Authority, State Housing Plan, (Honolulu: 1980), p. III-26.
15. U.S. Department of Housing and Urban Development, The Conversion of Rental Housing to Condominiums and Cooperatives (Washington: 1980), pp. IX-22, IX-25
16. Ibid.
17. Ibid.
18. See footnote 22 in Chapter 2.
19. U.S. Department of Housing and Urban Development, p. IX-12.
20. Ibid. at p. IX-24.
21. Ibid. at p. vi.
22. Raymond Struyk, The Housing and Neighborhood Environment of the Elderly: Challenges for the 1980s (1981), p. 33.
23. Hawaii Housing Authority, pp. III-86, -87.
24. U.S. Department of Housing and Urban Development, p. IX-16.
25. Ibid. at pp. iii, V-21.
26. Ibid. at pp. VII-15 - VII-20.
27. Ibid.
28. Ibid.
29. Ibid.
30. Maria Johnson, "Kicking the Poor: The Impact of Rent Control in Washington, D.C.", Journal of American Studies, Spring 1981, p. 28.
31. Ibid.
32. Roy Rowan, "Condomania's First Family", Fortune Magazine, August 10, 1981, p. 109.

33. Condominium conversions located in Keeaumoku-Makiki, including the Diamond Head slopes of Punchbowl, and in Waikiki comprise 35.5 per cent of the projects and 41 per cent of the units converted in the State. Donald Bell and Richard Haney, Jr., "Neither Utopia Nor Armagedon: Condominium Conversions in Hawaii" (unpublished draft, University of Hawaii, August 3, 1981), p. 7.
34. Ibid.
35. The Hawaii Housing Authority divides the housing need in the general population into 2 groups. The "statutory need group" which includes all households whose costs, crowding, or housing conditions fail to meet standards enacted in federal housing law. The "significant problem group" meets statutory need group criteria as well as more restrictive standards of social mobility and housing problems. According to a 1977 survey, elderly people are disproportionately represented in the overall housing need group. Of the elderly-headed households in the statutory need group 54 per cent were renters, and in the significant housing problem group 89 per cent were renters. Hawaii Housing Authority, pp. III-80, -87, -88.
36. See Chapter 1, Part B.
37. U.S. Department of Housing and Urban Development, p. VII-23.
38. See Chapter 1, Part B.
39. Ibid.

Chapter 4

1. "Long-term rental" means rental for 6 months or longer. It is considered "residential" in this study because the Hawaii Visitors Bureau data used includes in its "Visitor Plant Inventory" units in condominiums and apartment-hotels available for short-term rental of less than 6 months. The assumption is that residents do not seek housing from units listed in this Visitor Plant Inventory, which caters to tourists.

Only conversions from 1967 through 1979 were analyzed because both the Hawaii Visitors Bureau short-term rental information and owner-occupancy data, as determined from real property tax home exemption claims, was complete and available only for conversions in this time period.

2. Hawaii TMK Service, Hawaiian Condominium Guide, 1980-1981 (Honolulu: 1980).
3. Hawaii Visitors Bureau, Visitor Plant Inventory (Honolulu: 1967 through February 1981).
4. "...at the end of 1980" since Hawaii Visitors Bureau February 1981 "Visitor Plant Inventory" data are collected a few months earlier than the February publication date, Hawaii Visitors Bureau, Visitor Plant Inventory (Honolulu:

February 1981); Time share units were also considered as available for short-term rental, Hawaii State Real Estate Commission records; For owner-occupancy as determined by real property tax home exemption claims: TMK Sales Journal, Hawaiian Condominium Guide, 1980-1981, Sales/Owner's Journal (Honolulu: 1980); Real Estate Data, Inc., Real Estate Atlas of the State of Hawaii - Condominium Ownership Volumes, 1980 (Honolulu: 1980); Real Estate Atlas of the State of Hawaii - 1st thru 4th Tax Divisions Geographical Ownership Volumes (Honolulu: 1980).

5. Hawaii Visitors Bureau, Visitor Plant Inventory (Honolulu: 1967 through February 1981).
6. 1980 average occupancy in all neighbor island hotels was 62.6 per cent. 1980 average occupancy in Waikiki/Oahu hotels was 71.7 per cent. Hawaii Visitors Bureau, 1980 Annual Research Report (Honolulu), pp. 26, 27.
7. The same considerations of reduced renter demand by change in status of a person from renter to owner-occupant, and the possible depressed number of units in the short-term rental pool because of the downturn in tourism applies to conversions on the neighbor islands as well as those on Oahu. The low owner-occupancy rate on the neighbor islands (2.4 per cent) indicates that any reduction in renter demand by renters who buy and become owner-occupants is probably small.
8. Telephone conversation with Clement Young, Real Property Assessor, City and County of Honolulu, August 1981.
9. Ibid.
10. Ibid.
11. Ibid.
12. Ibid.
13. U.S. Department of Housing and Urban Development, The Conversion of Rental Housing to Condominiums and Cooperatives (Washington: 1980), pp. III-4, -5.
14. Telephone conversation with Clement Young, Real Property Assessor, City and County of Honolulu, August 1981.
15. Department of Housing and Urban Development, pp. iv, VI-8.

"What should you charge? As a general rule, your condo apartments should cost about 20% to 30% below the price charged for newly constructed condos or single family houses in the area." Hiroshi Sakai and Ralph Sahara, "Condominium Conversion Unit Sales", American Bar Association, Section of Real Property, Probate and Trust Law, Condominium Conversion (Honolulu: 1980), p. 10.

"Most one bedroom converted condo units sell for between \$70,000 and \$100,000." Pacific Business News, June 1, 1981, p. 6.

Chapter 5

1. Department of Housing and Urban Development, The Conversion of Rental Housing to Condominiums and Cooperatives (Washington: 1980), pp. XI-4, XI-29, XII-7.
2. Ibid., pp. XI-4, XI-8, XI-29, XII-7, XII-14.
3. Ibid., pp. XI-4, XI-9, XI-29, XII-7.
4. Ibid., pp. XI-10, XII-8.
5. Ibid., pp. XI-7, XII-7.
6. Ibid., pp. XI-8, XII-7.
7. Hawaii Rev. Stat., sec. 521-71.
8. Hawaii Rev. Stat., sec. 521-38.

9. A few states including New Jersey and Oregon, require separate notice of intent to evict. Department of Housing and Urban Development, p. XI-6.

Required time given existing tenants of notice of conversion: Less than 90 days: New Jersey; North Carolina; Tennessee. 90 days: Colorado; Hawaii; New Hampshire; St. Louis, Missouri. 120 days: Arizona; California; Georgia; Illinois; Michigan; Minnesota; Ohio; Virginia; West Virginia; Wisconsin; Hawaii; Seattle, Washington; Indianapolis, Indiana. More than 120 days: Connecticut; Florida; Maryland; Massachusetts; New York; Pennsylvania. National Association of Realtors, "Condominium Conversion Legislation" (unpublished, March 1, 1981).

10. National Association of Realtors; Department of Housing and Urban Development, pp. XI-4, XII-10.
11. Department of Housing and Urban Development, p. XII-13.
12. States include: Connecticut, Minnesota, and New York (applicable to New York City and municipalities in Nassau, Rockland, and Westchester counties, if they have implemented state law). Localities include: Montgomery County, Maryland; Chicago and Skokie, Illinois; Indianapolis, Indiana; Minneapolis and Wayzata, Minnesota; Oceanside, Los Angeles, and Walnut Creek, California; Lakewood, Lyndhurst, and Beachwood, Ohio; and Boston, Massachusetts. Department of Housing and Urban Development, pp. XI-6, XI-20, XI-21, and XII-10; U.S. Congress, Senate, Subcommittee on Banking, Housing, and Urban Affairs, Hearings on Condominium Conversions and S. 612, 96th Cong., 1st Sess., 1979, pp. 164-165. (hereinafter cited as Hearings)
13. Localities include: Indianapolis, Indiana; Arlington Heights and Chicago, Illinois; Lakewood and Lyndhurst, Ohio; Orange County, California; Boston, Massachusetts; and Philadelphia and Lower Merion, Pennsylvania. Department of Housing and Urban Development, p. XIII-10.

14. Uniform Laws Annotated, Uniform Condominium Act (1981).
15. Ibid., sec. 4-110.
16. Ibid.
17. Ibid.
18. Ibid.
19. Hawaii, Department of Regulatory Agencies, "Rules Relating to Horizontal Property Regimes, Chapter 514A, Hawaii Revised Statutes", sec. 16-107-28 (1981).
20. Hawaii Rev. Stat., sec. 514A-105.
21. Ibid., sec. 514A-102.
22. Ibid.
23. Ibid., sec. 514A-104.
24. Ibid.
25. Ibid., sec. 514A-105.
26. Ibid., sec. 514A-105.
27. Ibid.
28. Ibid., sec. 514A-107.
29. Telephone interview with Gladis Leong, Hawaii Real Estate Commission, September 1981.
30. Hawaii, Department of Regulatory Agencies, "Rules Relating to Horizontal Property Regimes, Chapter 514A, Hawaii Revised Statutes", sec. 16-107-30 (1981).
31. Lengths of right of first refusal:

States: 30 days: Oregon and Arizona. 45 days: Florida. 60 days: California, Minnesota, New Hampshire, Virginia, West Virginia, Wisconsin, New York (applicable to New York City). 90 days: Connecticut, Florida (limited to tenants who were in occupancy at least 6 months prior to notice of intent to convert), New Jersey, Ohio. 120 days: Illinois. 180 days: Pennsylvania.

Localities: 30 days: Skokie, Illinois; and Mercer Island, Washington. 45 days: Indianapolis, Indiana. 60 days: Washington, D.C.; Atlanta, Georgia; Montgomery County, Maryland; Webster Grove, Missouri; Long Beach, Marin County, Montclair, Mountain View, Oakland, San Diego, and Santa Ana,

California. 90 days: Concord, Cupertino, Garden Grove, La Mesa, Orange County, Palo Alto, and San Jose, California; Beachwood, Lakewood, and Lyndhurst, Ohio. 120 days: Arlington Heights, Chicago, and Evanston, Illinois; and Lynnwood, Ohio.

Department of Housing and Urban Development, pp. XI-5, XI-8, XII-14; N. Y. General Business Law, sec. 352-eeee (1980).

32. Department of Housing and Urban Development, pp. XI-8, XII-14.
33. Uniform Laws Annotated, Uniform Condominium Act (1981), sec. 4-110.
34. Ibid.
35. Ibid.
36. Ordinance durations wherein developer cannot make a better offer to third parties: 120 days: Atlanta, Georgia; 1 year: King County, Washington. Department of Housing and Urban Development, p. XII-14; See also footnote 33.
37. Uniform Laws Annotated, Uniform Condominium Act (1981), sec. 4-110.
38. Ibid.
39. Washington, D.C.; Montgomery County, Maryland; and Minneapolis, Minnesota. Department of Housing and Urban Development, p. XII-15; Hearings, p. 185.
40. States: New Jersey: 1 month's rent.

Localities: Evanston, Illinois: actual moving expenses, or higher of \$300 or 1 month's rent. Santa Ana, California: actual moving expenses up to \$500. San Francisco, California: \$1,000 maximum or amount fixed by a Relocation Schedule. Los Angeles and Los Angeles County: \$500. Seattle, Washington: \$350. Oceanside, California: 1 month's rent. Walnut Creek and San Diego, California: 2 month's rent. Duarte, California: 1-1/2 month's rent. King County, Washington: \$350 or 2 month's rent, whichever is greater. District of Columbia: \$125 times the number of rooms in the unit. Alameda, California: \$150 plus \$10 for each room. Department of Housing and Urban Development, pp. XI-9, XII-16; Hearings, p. 141.
41. Department of Housing and Urban Development, p. XI-9.
42. States: Connecticut low-income tenants receive moving expenses of 1 month's rent, up to \$500.

Localities: City of Los Angeles: \$2,500 per household, in lieu of relocation expenses and rental subsidies for elderly, disabled, low- or moderate-income housing. Montgomery, Maryland: \$750 for tenant below income guidelines. Oceanside, California: 2 month's rent for low-income tenants. Evanston and Skokie, Illinois: limit payment of moving expenses to section 8 housing subsidy eligible tenants. Ibid. pp. XI-9, XII-17.

43. States: Connecticut, New Jersey.
- Localities: Walnut Creek, Santa Ana, Oceanside, and San Mateo, California. Department of Housing and Urban Development, pp. XI-9, XII-17, XII-18; Hearings, p. 140.
44. Department of Housing and Urban Development, p. XII-18; Hearings, p. 140.
45. Hearings, p. 139.
46. Localities: Orange County, California; Lakewood and Lyndhurst, Ohio; Evanston and Webster Grove, Missouri; Philadelphia, Pennsylvania; Everett and Seattle, Washington; and District of Columbia. Department of Housing and Urban Development, pp. XI-10, XII-19.
47. Localities: Cupertino, Garden Grove, Oakland, Palo Alto, and San Francisco, California; Montgomery County, Maryland; and Skokie, Illinois. Ibid., p. XII-19.
48. Ibid.
49. Ibid., p. XI-7.
50. Ibid., p. XII-12.
51. Ibid.
52. States: Illinois: limits showing to reasonable number of times, at appropriate hours, during the last 90 days of an expiring tenancy. New Jersey: No right to show unit during first 90 days after notice of intent to convert unless tenant has in writing waived tenant's right to purchase. Oregon: tenant's permission required.
- Localities: Chicago: no showing of unit for 30 days after tenant receives notice of intent to convert. Lakewood and Lyndhurst, Ohio: deems entry by a landlord more than twice a week to be an "abuse of the right of access". Ibid., pp. XI-7, XII-12.
53. Minnesota, West Virginia, and Pennsylvania adopted the Uniform Condominium Act in 1980, see Uniform Laws Annotated, Uniform Condominium Act (1981), sec. 4-110.
54. N.Y. General Business Law, sec. 352-eeee (1980).
55. Department of Housing and Urban Development, p. XII-11.
56. Hearings, p. 146.
57. Ibid.
58. N.Y. General Business Law, sec. 352-eeee (1980).

59. Ibid.
60. Ibid.
61. Ibid.
62. Ibid., sec. 352-eee (1980).
63. Department of Housing and Urban Development, p. XII-5.
64. Ibid., p. XII-12.
65. Skokie, Illinois: elderly and handicapped, and families with children have right to lease extension of 6 months. Los Angeles and Los Angeles County: 1 year during relocation efforts, with no duration limit during relocation efforts for the elderly, disabled, households with minor children, or low- to moderate-income tenants. Ibid.
66. Ibid., p. XII-11.
67. Cupertino, Garden Grove, and Palo Alto provide 90-day lease extensions if the lease expires before or at the time the Final Subdivision Report is issued or sales begin. Ibid.
68. In California: Newport Beach, requires 30 per cent of tenants to express written interest in exercising their option to purchase their unit: San Francisco, and Thousand Oaks requires the necessary 50 per cent tenant approval be surveyed by an independent firm rather than the developer. Ibid., p. XII-13; Hearings, p. 160.
69. N.Y. General Business Law, sec. 352-eee (1980).
70. Ibid.
71. Ibid.
72. Ibid.
73. Ibid.
74. Ibid.
75. Tenants must be 62 years or older on the date the conversion offering plan is declared effective, resided in the unit as their primary residence at least 2 years, and have an annual household income of less than \$50,000. Handicapped tenants must have resided in the unit as their primary residence at least 2 years. Ibid.

Chapter 6

1. Department of Housing and Urban Development, The Conversion of Rental Housing to Condominiums and Cooperatives (Washington: 1980), p. XII-6.

2. Ibid.

3. No conversions unless the rental vacancy rate is: 3 per cent or greater: Montclair, California; greater than 4 per cent: Cambridge, Massachusetts; 5 per cent or greater: Cupertino and Marin County (discretionary with Planning Commission) California, and Vail, Colorado; greater than 5 per cent: Los Angeles, Orange County, and San Diego, California; greater than 6 per cent: San Bernadino, California.

Ibid., pp. XII-27, Appendix 2-X; U.S., Congress, Senate, Subcommittee on Banking, Housing, and Urban Affairs, Hearings on Condominium Conversions and S. 612, 96th Cong., 1st Sess., 1979, pp. 169-170 (hereinafter cited as Hearings)

4. Department of Housing and Urban Development, p. XII-27.

5. No conversion if rental vacancy rate is: District of Columbia, 3 per cent or lower, unless a majority of tenants consent to covnersion or the units are luxury or high rent units; Gardena, California, 3 per cent or lower, unless two-thirds of tenants approve; Newport Beach, California, 5 per cent or lower, unless two-thirds of tenants approve or project's effect is minimal; Palo Alto, California, 3 per cent or lower unless two-thirds of tenants approve. Ibid., pp. XII-28, Appendix 2-X; Hearings, pp. 169-170.

6. Department of Housing and Urban Affairs, p. XII-27.

7. In Mountain View, California, annual conversion is limited to 5 per cent of the total rental units in development with 4 or more units. Ibid., p. XII-27, Appendix 2-X.

8. However, approval may be granted even if the quota is reached if the developer provides for low- to moderate-income households and senior citizens, or constructs new rental housing, or donates land or funds for new rental housing or senior citizens. Ibid.

9. Ibid.

10. Ibid.

11. The unused quota may not be carried forward into the next year. Ibid., p. XII-28, Appendix 2-X; Hearings, p. 168.

12. Tenant approved conversions count as a deficit in the rental stock which must be made up with new construction. Department of Housing and Urban Development, p. XII-28, Appendix 2-X.

13. Developer can show that the developer added new rental units, or through contracts with others which increase new rental construction, increase the number of units in existing buildings, convert non-residential buildings to residential, rehabilitate residential buildings that were vacant for 1 year prior to rehabilitation, or if the owner of a newly constructed project agrees to offer the units as rentals for at least 7 years. A developer may have to provide replacement housing in the same neighborhood as the conversion project, however, if the city finds it will create a shortage or other negative impact in that specific city area. Ibid.
14. Department of Housing and Urban Development, pp. XII-28, Appendix 2-X; Hearings, p. 168.
15. In Concord and Walnut Creek, California, the Planning Commission must find the conversion will not delete low- and moderate-income rental units at a time when no equivalent housing is readily available. In Alameda, California, the Planning Board must find that the conversion does not significantly reduce rental units available in the price range below the median price range of apartments. Hearings, p. 165.
16. In Marin County, California, approval may be denied if the number of rental units would be reduced to less than 25 per cent of total dwelling units. In Glastonbury, Connecticut, one way conversions may be approved is if the party seeking approval has increased the rental stock by 50 units in the previous 3 months. Department of Housing and Urban Development, p. XII-29.
17. Ibid.
18. See footnote 15 relating to Concord and Walnut Creek, California. Also in Glastonbury, Connecticut, conversion will not be permitted until the tenant has purchased a unit, relocated, waived the right to relocate, etc. Ibid.
19. In Concord and Belmont, California, the conversion is denied if it will adversely affect the diversity of housing types or supply of alternative types of housing, respectively. Hearings, p. 164.

Chapter 7

1. Department of Housing and Urban Development, The Conversion of Rental Housing to Condominiums and Cooperatives (Washington: 1980), p. XII-30.
2. Ibid.; U.S., Congress, Senate, Subcommittee on Banking, Housing, and Urban Affairs, Hearings on Condominium Conversions and S. 612, 96th Cong., 1st Sess., 1979, p. 176.
3. Department of Housing and Urban Development, p. XII-30.
4. If units are to be retained as rentals, the rent must be the lower of the rent at the time of application for conversion or the maximum rent within low- or moderate-income levels. Such units must remain in the low- and

moderate-income rental stock for 20 years unless sold. If sold, they must be offered for sale at prices not in excess of 2-1/2 times the median income of low- or moderate-income families in the area. The city has the right of first refusal to buy at the original purchase price plus adjustments. The city must sell the unit to low- and moderate-income households. Ibid., pp. XII-30, XII-31.

5. Ibid., p. XII-31.
6. Ibid.
7. Ibid.

Chapter 8

1. Department of Housing and Urban Development, The Conversion of Rental Housing to Condominiums and Cooperatives (Washington: 1980), pp. XI-10 to XI-19, XI-22 to XI-24, XII-20 to XII-26.
2. Hawaii Rev. Stat., sec. 514A-61.
3. Ibid., sec. 514A-65.
4. Ibid., sec. 514A-63.
5. Ibid., sec. 514A-66.
6. Ibid., sec. 514A-61.

Chapter 9

1. New York City's landmarks preservation law prohibited construction of an office building above Grand Central Station since the Station had been designated a historical landmark. 438 U.S. 104 (1978).
2. Ibid., at 130.
3. Ibid.
4. Ibid., at 131.
5. Ibid., at 131, 132.
6. Ibid.
7. Ibid., at 136.

8. In Pennsylvania Coal Co. v. Mahon the claimant had sold the surface rights to particular parcels of property, but expressly reserved the right to remove the coal thereunder. A Pennsylvania statute, enacted after the transaction, forbade any mining of coal that caused the subsidence of any house, unless the house was the property of the owner of the underlying coal and was more than 150 feet from the improved property of another. Because the statute made it commercially impracticable to mine the coal, and thus had nearly the same effect as the complete destruction of rights claimant had reserved, the Court held that the statute was invalid as effecting a "taking" without just compensation. 260 U.S. 393 (1922).
9. 438 U.S. 104, 127, 136 (1978).
10. Ibid., at 136.
11. Ibid.
12. The Court held that the Town of Brookline's prohibition on developers evicting tenants who refused to vacate converted buildings voluntarily, and provisions that the condominium purchaser could bring an eviction proceeding with a mandatory 6-month stay of issuance of the certificate of eviction, did not constitute a taking without just compensation and did not violate the equal protection rights of the condominium developer, owner, and potential condominium purchaser. The plaintiffs argued that the law transferred the right to possess from the owner to the tenants and compelled the condominium owner to become a landlord, and contended that the withholding of the right of the owner to possess the property was an appropriation of the property for a public purpose. 79 Mass. Adv. Sh. 2257, 399 N.E.2d 1038 (1979).
13. Ibid., at 1045.
14. Ibid., at 1046.
15. Ibid.

Chapter 10

1. 79 Mass. Adv. Sh. 2257, 399 N.E.2d 1038 (1979).
2. Ibid., at 1045.
3. 104 Misc.2d 750, 429 N.Y.S.2d 343 (1979).
4. Equity No. 68203, Circuit Court of Montgomery County (1979).
5. Initial U.S. Supreme Court cases upheld rent control laws in legislative declared emergencies. Block v. Hirsch, 256 U.S. 135 (1921); Chastleton Corp. v. Sinclair, 264 U.S. 543 (1924). The emergency requirement became less compelling as the County became less hostile to a broader view of the power to regulate. Nebbia v. New York 291 U.S. 502 (1934). At least 2 state

courts have read Nebbia to hold rent control laws valid even without an emergency. Westchester West No. 2 Ltd. Partnership v. Montgomery County, 276 Md. 448, 348 A.2d 856 (1975); Birkenfeld v. City of Berkeley, 17 Cal. 3d 129, 550 P.2d 1001 (1976).

Chapter 11

1. Bi-Metallic Inv. Co. v. State Bd. of Equalization, 239 U.S. 441 (1915).
2. Armstrong v. Manzo, 380 U.S. 545, 552 (1965); Goldberg v. Kelly, 397 U.S. 254, 267-271 (1970).
3. Note, the Validity of Ordinances Limiting Condominium Conversion, 78 Mich. L. Rev. 124, p. 136 (1979).
4. In Eubank v. Richmond, the Court declared invalid an ordinance allowing property owners on a street to establish building lines on that street. 226 U.S. 137 (1912). In Cusack v. Chicago, however, the Court upheld a law that prohibited billboard erection without consent of hereby property owners, distinguishing Eubank by noting that the ordinance in Eubank permitted property owners to establish a new prohibition, while the Cusack ordinance only allowed property owners to remove an existing prohibition. 242 U.S. 526. In Washington ex rel Seattle Title Trust Co. v. Roberge, the Court struck down an ordinance that required builders of a home for the elderly to obtain the consent of neighborhood homeowners. The Court tried to distinguish the case from Cusack by holding that Cusack's billboard regulation had concerned a use that threatened "the safety and decency" of neighbors, while the home for the elderly in Roberge benefitted the community. 278 U.S. 116 (1928).

Chapter 12

1. The law provided that any tenant who is 62 years of age or older, and has been living within an apartment that is being converted for 2 years prior to the date the Attorney General has accepted the plan for filing, and who has an annual income of less than \$30,000 cannot be evicted. 104 Misc.2d 750, 429 N.Y.S.2d 343 (1979).
2. 79 Mass. Adv. Sh. 2257, 399 N.E.2d 1038 (1979).
3. Equity No. 68203 (Circuit Court of Montgomery County, 1979).
4. 375 Mass. 197, 375 N.E.2d 1212 (1978).
5. There was no violation of equal protection because other types of multiple ownership, including motels, are treated differently in that motels are typically used for 1 or 2 nights during all seasons while cottage colonies are used for longer periods during summer vacations. Ibid.

Chapter 13

1. Rocio Corp. v. City of Miami Beach, and Carriage House Associates v. City of Miami Beach, Case Nos. 80-4422 and 80-4545, respectively (Circuit Court of the 11th Judicial Circuit in and for Dade County, Florida, 1980); 2500 Inverrary Club Apartments v. City of Lauderhill, Case No. 80-4183 (Circuit Court of the 17th Judicial Circuit in and for Broward County, Florida, 1980); Hampshire House Sponsors Corp. v. Burrough of Fort Lee, Docket No. L-11977PW and Central Towers Company v. The Burrough of Fort Lee and Northbridge Tenants Association, Intervenor, Docket No. L-11504-79PW, and Deauville Towers v. The Burrough of Fort Lee, Docket No. L-11984-79PW, and Imperial Associates, Ltd. v. The Burrough of Fort Lee, Docket No. L-14166-PW (Superior Court of New Jersey, Lower Division, Bergen County, 1979); Claridge House I, Inc., v. Borough of Verona, Case No. 79-2765 (U.S. District Court, District of New Jersey, 1979).
2. In Apartment & Office Building Ass'n v. Montgomery County, Maryland, the circuit court of Montgomery County upheld a moratorium ordinance as an enlargement of state law. Eq. No. 68354 (Cir. Ct. Md., filed Dec. 6, 1979).
3. 79 Mass. Adv. Sh. 2257, 399 N.E.2d 1038 (1979).
4. Ibid., at 1042.
5. 367 Mass. 561, 326 N.E.2d 876 (1975).
6. 79 Mass. Adv. Sh. 2257, 399 N.E.2d 1038, 1042-1043 (1979).

Chapter 14

1. Department of Housing and Urban Development, The Conversion of Rental Housing to Condominiums and Cooperatives (Washington: 1980), p. XI-28. Some of the cities and the length of their moratoria follows: Palo Alto, California: 6 months; Alameda, California: 11 months; Washington, D.C.: 2 years, 180 days; Evanston, Illinois: 9 months; Arlington Heights, Illinois: 2 months; Seattle, Washington: 6 months; Skokie, Illinois: 7 months; Lynnwood, Washington: 3 months; Edmonds, Washington: 4 months. Gregory Longhini and Daniel Lauber, Condominium Conversion Regulations: Protecting Tenants (1979), p. 7.
2. Department of Housing and Urban Development, p. XI-28.
3. A District of Columbia Superior Court struck down the third moratorium in a series of moratoria since there was no independent legislative findings to support it. David Madway, Condo Conversion is a Religious Experience (unpublished Condominium Conversion Material, American Bar Association, Section of Real Property, 1980), p. 11.

4. South Lake Tahoe, California, enacted an outright prohibition in 1979. A prohibition on construction of new multi-family housing had intensified an already severe housing shortage. The city based its moratorium on findings that the conversion of rental apartments would exacerbate this situation and substantially increase the cost of housing. Note, Regulatory Responses to the Condominium Conversion Crisis, 59 Washington University Law Quarterly 513 (1981), p. 526.
5. Municipalities include District of Columbia and City of Seattle. Ibid., p. 525.
6. Department of Housing and Urban Development, p. XI-28.
7. Municipalities include Marin County, La Mesa, and Palo Alto, California. Note, Regulatory Responses to the Condominium Conversion Crisis, p. 526.
8. Montgomery County, Maryland is typical. In July 1979 the county council declared a public emergency in the rental housing market, which justified a 120-day moratorium on conversions. Follow-up legislation was introduced in September 1979. Ibid.
9. Case No. 79-1053 (District of Columbia Court of Appeals, 1980).
10. Other bases for holding the moratorium ordinance unconstitutional were that it was vague (about at which point a building actually becomes a condominium), and arbitrary in the selection of a 30-unit cutoff. Case No. 79C-1284 (U.S. District Court, Northern District of Illinois, Eastern Division, 1979).
11. Robert A. Wittie, Governmental Responses to the Conversion Process (Unpublished Condominium Conversion Material, American Bar Association, Section of Real Property, 1980), p. 252-253.

Chapter 15

1. "When conversions occur in locales with adequate alternative housing, there is slight public reaction. A number of major cities report that they had no public concern voiced over conversions and have no controlling legislation. Almost without exception, these same cities also report rental vacancy rates with a higher than 1 to 2 percentage rate typically experienced by cities who have passed conversion ordinances." Urban Consortium, Condominium Conversion Controls (Washington: 1979), pp. 45, 46.
2. U.S. Congress, Senate, Subcommittee on Banking, Housing, and Urban Affairs, Hearings on Condominium Conversions and S. 612, 96th Cong., 1st Sess., 1979, p. 172, citing Sigmund Shapiro, Central Service Branch, Economic and Market Analysis Division, Policy Analysis and Research, HUD, (202) 755-5875.

3. Telephone interview with Robert C. Schmitt, Chief, Statistical Analysis Branch, Research and Economic Analysis Division, Department of Planning and Economic Development, State of Hawaii, Nov. 1981.
4. U.S. Bureau of the Census, Annual Housing Survey: 1976, Housing Characteristics for Selected Metropolitan Areas.
5. Telephone interview with Robert C. Schmitt.
6. Federal Home Loan Bank of Seattle, Honolulu Housing Vacancy Survey, 1974-1981 (hereinafter cited as Honolulu Housing Vacancy Survey); Department of Housing and Urban Development, Postal Vacancy Survey, 1965-1973.
7. Mr. Robert Schmitt stated that there is no way that the apartment vacancy rate figures from the Honolulu Housing Vacancy Survey can be construed to give an indication of the rental vacancy rate in Hawaii because the definition of "apartment" in the Honolulu Housing Vacancy Survey is not limited to rental housing. Telephone interview with Robert C. Schmitt, Nov. 1981, Jan. 22, 1982.
8. Honolulu Housing Vacancy Survey, March 1981.
9. Ibid.
10. Ibid.
11. Ibid.
12. Telephone interview with Robert C. Schmitt, Jan. 22, 1982, referring to a survey by the Office of Financial Management, State of Washington.
13. See Chapter 3, section A.
14. Ibid.
15. See Chapter 2, section D.
16. See Chapter 3, section B.
17. See Chapter 2.
18. See Chapter 3, section C.
19. See Chapter 4, section A.
20. See Chapter 4, section B.
21. See Chapter 4, section C.
22. Hawaii Rev. Stat., sec. 226-19.
23. See Chapter 5, section A.

24. See Chapter 5, section B.
25. See Chapter 5, section E.

Chapter 16

1. Telephone interview with Robert C. Schmitt, Chief, Statistical Analysis Branch, Research and Economic analysis Division, Department of Planning and Economic Development, State of Hawaii, December 31, 1981.
2. Ibid.
3. Hawaii, Department of Regulatory Agencies, "Rules Relating to Horizontal Property Regimes, Chapter 514A, Hawaii Revised Statutes", sec. 16-107-30 (1981).
4. Hawaii Rev. Stat., sec. 521-53.
5. Ibid., sec. 521-73.
6. Ibid.
7. Telephone interview with Judy Martin, Honolulu Board of Realtors, Jan. 26, 1982.

HOUSE RESOLUTION

REQUESTING A STUDY ON REGULATION OF CONDOMINIUM CONVERSION.

WHEREAS, adequate and decent housing is a necessity, and due to various economic and other factors, this necessity is becoming more difficult to obtain for many families in Hawaii; and

WHEREAS, many families are unable to afford to own their own homes due to the extremely high cost of buying a home, whether a single-family dwelling or a condominium, and are forced to rent a home, and there exists now in Hawaii a serious and chronic shortage of rental dwelling units; and

WHEREAS, there has been a tremendous growth in the number of rental apartment buildings being converted to horizontal property regimes (condominiums), and such growth may be attributable to:

- (1) The enormous potential for profit in selling condominium units coupled with the exhaustion of tax shelter benefits such as depreciation and interest payments and the rising costs of maintenance of such rental apartment buildings;
- (2) Reaction to and fear of rent control, tenant unions and strong tenants' rights laws, and condominium conversion regulations; and
- (3) The current economic and real estate market where land for residential use is scarce and extremely costly, single-family dwellings are out of reach for most families while there are many available buyers for condominium units, and a proportionate (compared to conversion) decreasing profitability in maintaining rental units;

and

WHEREAS, the condominium conversion boom has had the drastic effect of reducing the number of rental units available, and this factor, along with low vacancy rates and increasing rental costs, has created a rental housing crisis in Hawaii, both in terms of rental availability and of rental costs; and

WHEREAS, because condominium conversion requires that tenants be evicted to allow for refurnishing of the unit and resale, many existing and potential renters are being displaced or forced out of the rental housing market, and the rental housing crisis has especially affected low- and moderate-income families and persons who cannot afford to purchase a home and who may not be able to afford or even find a decent rental unit if the crisis worsens; and

WHEREAS, since present laws might not adequately protect tenants of units which are to be converted to condominiums, some kind of protection may be necessary and in the public interest, and various approaches to regulate or limit condominium conversions have been suggested, including, but not limited to:

- (1) A moratorium on condominium conversions for a specified period of time;
- (2) Prohibition of condominium conversions unless the vacancy rate exceeds a given percentage;
- (3) Requiring a certain percentage of tenants to approve conversion;
- (4) Requiring the person converting the building to assist nonpurchasing tenants in relocation and to subsidize any increase in their rent for a limited time;
- (5) Requiring a certain percentage of units converted to be set aside and priced for low- and moderate-income families; and
- (6) Amendment of tax laws to treat conversion sale profit as ordinary income instead of capital gain;

and

WHEREAS, some of these approaches raise constitutional issues, including whether the legislation is a proper exercise of police power, taking of property without just compensation, and improper delegation of power, and such issues are extremely complex and their resolution might depend upon whether the courts find that the legislation is necessary to the protection of the public health, welfare, safety, morals, or property; and

WHEREAS, other issues include questions on how and when vested rights are affected by the legislation and how the alienation of real property can be restricted to assure that adequate low- and moderate-income housing is set aside; and

WHEREAS, the regulation or limitation of condominium conversion may be necessary to implement the Hawaii State Plan's (section 226-19, Hawaii Revised Statutes) objectives of providing balanced housing opportunities for all economic segments of the community, and to prevent displacement of a large segment of the community and to secure decent housing at affordable rents; now, therefore,

BE IT RESOLVED by the House of Representatives of the Eleventh Legislature of the State of Hawaii, Regular Session of 1981, that the Legislative Reference Bureau conduct a comprehensive study during the 1981-82 interim to analyze the various constitutional and other legal issues in the different approaches to limit, restrain, or regulate condominium conversion; and

BE IT FURTHER RESOLVED that the Legislative Reference Bureau report its findings and recommendations to the House of Representatives prior to the convening of the Regular Session of 1982; and

BE IT FURTHER RESOLVED that certified copies of this Resolution be transmitted to the Speaker of the House of Representatives and to the Director of the Legislative Reference Bureau.