
A BILL FOR AN ACT

RELATING TO RESTRICTIONS ON THE TRANSFER OF REAL PROPERTY UNDER
CHAPTER 201H, HAWAII REVISED STATUTES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Section 201H-47, Hawaii Revised Statutes, is
amended to read as follows:

**"§201H-47 Real property; restrictions on transfer; waiver
of restrictions.** (a) The following restrictions shall apply to
the transfer of real property developed and sold under this
chapter, whether in fee simple or leasehold:

(1) For a period of ten years after the purchase, whether
by lease, assignment of lease, deed, or agreement of
sale, if the purchaser wishes to transfer title to the
real property, the corporation shall have the first
option to purchase the real property at a price that
shall not exceed the sum of:

(A) The original cost to the purchaser, as defined in
rules adopted by the corporation;



1 (B) The cost of any improvements added by the
2 purchaser, as defined in rules adopted by the
3 corporation;

4 (C) Simple interest on the original cost and capital
5 improvements to the purchaser at the rate of one
6 per cent per year; and

7 (D) The amount, if any, previously paid by the
8 purchaser to the corporation as the corporation's
9 share of net appreciation in the real property;

10 (2) The corporation may purchase the real property
11 either[+] by conveyance:

12 (A) [~~By conveyance free~~] Free and clear of all
13 mortgages and liens; or

14 (B) [~~By conveyance subject~~] Subject to existing
15 mortgages and liens.

16 If the real property is conveyed in the manner
17 provided in subparagraph (A), it shall be conveyed to
18 the corporation only after all mortgages and liens are
19 released. If the real property is conveyed in the
20 manner provided in subparagraph (B), the corporation
21 shall acquire the real property subject to any first



1 mortgage created for the purpose of securing the
2 payment of a loan of funds expended solely for the
3 purchase of the real property by the seller; and any
4 mortgage or lien created for any other purpose;
5 provided that the corporation has previously consented
6 to it in writing.

7 The corporation's interest created by this
8 section shall constitute a statutory lien on the real
9 property and shall be superior to any other mortgage
10 or lien, except for any first mortgage created for the
11 purpose of securing the payment of a loan of funds
12 expended solely for the purchase of the real property
13 by the seller; any mortgage insured or held by a
14 federal housing agency; and any mortgage or lien
15 created for any other purpose; provided that the
16 corporation has previously consented to it in writing.

17 The amount paid by the corporation to the seller shall
18 be the difference, if any, between the purchase price
19 determined by paragraph (1)(A) to (D), and the total
20 of the outstanding principal balances of the mortgages
21 and liens assumed by the corporation;



1 (3) A purchaser may refinance real property developed and
2 sold under this chapter; provided that the purchaser
3 shall not refinance the real property within ten years
4 from the date of purchase for an amount in excess of
5 the purchase price as determined by paragraph (1) (A)
6 to (C); provided further that the purchaser shall
7 obtain the corporation's written consent if any
8 restriction on the transfer of the real property
9 remains applicable;

10 (4) After the end of the tenth year from the date of
11 initial purchase or execution of an agreement of sale,
12 the purchaser may sell the real property and sell or
13 assign the property free from any price restrictions;
14 provided that the purchaser shall be required to pay
15 to the corporation the sum of:

16 (A) The balance of any mortgage note, agreement of
17 sale, or other amount owing to the corporation;

18 (B) Any subsidy or deferred sales price made by the
19 corporation in the acquisition, development,
20 construction, and sale of the real property, and
21 any other amount expended by the corporation not



1 counted as costs under section 201H-45 but
2 charged to the real property by good accounting
3 practice as determined by the corporation whose
4 books shall be prima facie evidence of the
5 correctness of the costs;

6 (C) Interest on the subsidy or deferred sales price,
7 if applicable, and any other amount expended at a
8 rate established by the corporation computed as
9 to the subsidy or deferred sales price, if
10 applicable, from the date of purchase or
11 execution of the agreement of sale, and as to any
12 amount expended, from the date of expenditure;
13 provided that the computed interest shall not
14 extend beyond thirty years from the date of
15 purchase or execution of the agreement of sale of
16 the real property. If any proposed sale or
17 transfer will not generate an amount sufficient
18 to pay the corporation the sum as computed under
19 this paragraph, the corporation shall have the
20 first option to purchase the real property at a



1 price that shall not exceed the sum as computed
2 under paragraphs (1) and (2); and

3 (D) The corporation's share of appreciation in the
4 real property as determined under rules adopted
5 pursuant to chapter 91, when applicable;

6 (5) Notwithstanding any provision in this section to the
7 contrary, pursuant to rules adopted by the
8 corporation, the subsidy or deferred sales price
9 described in paragraph (4)(B) and any interest accrued
10 pursuant to paragraph (4)(C) may be paid, in part or
11 in full, at any time; and

12 (6) Notwithstanding any provision in this section to the
13 contrary, the corporation's share of appreciation in
14 the real property described in paragraph (4)(D):

15 (A) Shall apply when the sales price of the real
16 property that is developed and sold under this
17 chapter is less than the then-current,
18 unencumbered, fair market value of the real
19 property, as determined by a real property
20 appraisal obtained [~~prior to~~] before the closing
21 of the sale;



1 (B) Shall be a restriction that runs with the land
2 until it is paid in full and released by the
3 corporation, or extinguished pursuant to
4 subsection (f); and

5 (C) May be paid, in part or in full, at any time
6 after recordation of the sale.

7 (b) If the corporation waives its first option to
8 repurchase the real property provided in subsection (a), a
9 qualified nonprofit housing trust shall have the option to
10 purchase the real property at a price that shall not exceed the
11 sum of:

12 (1) The original cost to the purchaser, as defined in
13 rules adopted by the corporation;

14 (2) The cost of any improvements added by the purchaser,
15 as defined in rules adopted by the corporation;

16 (3) Simple interest on the original cost and capital
17 improvements to the purchaser at the rate of one per
18 cent per year; and

19 (4) The corporation's share of net appreciation in the
20 real property to be paid as determined under rules
21 adopted pursuant to chapter 91, when applicable.



1 (c) For a period of ten years after the purchase, whether
2 by lease, assignment of lease, deed, or agreement of sale, if
3 the purchaser wishes to transfer title to the real property, and
4 if the corporation or the qualified nonprofit housing trust
5 selected by the corporation does not exercise the option to
6 purchase the real property as provided in subsection (a) or (b),
7 then the corporation shall require the purchaser to sell the
8 real property to a "qualified resident" as defined in section
9 201H-32, and upon the terms that preserve the intent of this
10 section and sections 201H-49 and 201H-50, and in accordance with
11 rules adopted by the corporation.

12 (d) The corporation may waive the restrictions prescribed
13 in subsections (a) through (c) if:

14 (1) The purchaser wishes to transfer title to the real
15 property by devise or through the laws of descent to a
16 family member who would otherwise qualify under rules
17 established by the corporation;

18 (2) The sale or transfer of the real property would be at
19 a price and upon terms that preserve the intent of
20 this section without the necessity of the State
21 repurchasing the real property; provided that, in this



1 case, the purchaser shall sell the real property and
2 sell or assign the real property to a person who is a
3 "qualified resident" as defined in section 201H-32;
4 [~~and~~] provided further that the purchaser shall pay to
5 the corporation its share of appreciation in the real
6 property as determined in rules adopted pursuant to
7 chapter 91, when applicable; or

8 (3) The sale or transfer is of real property subject to a
9 sustainable affordable lease as defined in section
10 516-1.

11 (e) The corporation may release the restrictions
12 prescribed in subsections (a) through (c) if the real property
13 is financed under a federally subsidized mortgage program and
14 the restrictions would jeopardize the federal government's
15 ability to recapture any interest credit subsidies provided to
16 the homeowner.

17 (f) The restrictions prescribed in this section and
18 sections 201H-49 to 201H-51 shall be automatically extinguished
19 and shall not attach in subsequent transfers of title when a
20 qualified nonprofit housing trust becomes the owner of the real
21 property pursuant to subsection (b); or a mortgage holder or



1 other party becomes the owner of the real property pursuant to a
2 mortgage foreclosure, foreclosure under power of sale, or [a]
3 conveyance in lieu of foreclosure after a foreclosure action is
4 commenced; provided that the mortgage is the initial purchase
5 money mortgage, or that the corporation consented to and agreed
6 to subordinate the restrictions to the mortgage when originated,
7 if the mortgage is not the initial purchase money mortgage; or
8 when a mortgage is assigned to a federal housing agency. Any
9 law to the contrary notwithstanding, a mortgagee under a
10 mortgage covering real property or leasehold interest encumbered
11 by the first option to purchase in favor of the corporation,
12 [~~prior to~~] before commencing mortgage foreclosure proceedings,
13 shall notify the corporation in writing of:

14 (1) Any default of the mortgagor under the mortgage within
15 ninety days after the occurrence of the default; and

16 (2) Any intention of the mortgagee to foreclose the
17 mortgage under chapter 667 forty-five days [~~prior to~~]
18 before commencing mortgage foreclosure proceedings;

19 provided that the mortgagee's failure to provide written notice
20 to the corporation shall not affect the mortgage holder's rights
21 under the mortgage. The corporation shall be a party to any



1 foreclosure action, and shall be entitled to its share of
2 appreciation in the real property as determined under this
3 chapter in lien priority when the payment is applicable, and if
4 foreclosure occurs within the ten-year period after the
5 purchase, the corporation shall also be entitled to all proceeds
6 remaining in excess of all customary and actual costs and
7 expenses of transfer pursuant to default, including liens and
8 encumbrances of record; provided that the person in default
9 shall be entitled to an amount that shall not exceed the sum of
10 amounts determined pursuant to subsection (a)(1)(B) and (C).

11 (g) The provisions of this section shall be incorporated
12 in any deed, lease, agreement of sale, or ~~any~~ other instrument
13 of conveyance issued by the corporation. In any sale by the
14 corporation of real property for which a subsidy or deferred
15 sales price was made by the corporation, the amount of the
16 subsidy or deferred sales price described in subsection
17 (a)(4)(B), a description of the cost items that constitute the
18 subsidy or deferred sales price, and the conditions of the
19 subsidy or deferred sales price shall be clearly stated at the
20 beginning of the contract document issued by the corporation.
21 In any sale in which the corporation's share of appreciation in



1 real property is a restriction, the terms of the shared
2 appreciation equity program shall be clearly stated and included
3 as an exhibit in any deed, lease, agreement of sale, or [any]
4 other instrument of conveyance.

5 (h) This section need not apply to market-priced units in
6 an economically integrated housing project, except as otherwise
7 determined by the developer of the units; provided that
8 preference shall be given to qualified residents in the initial
9 sale of market-priced units.

10 (i) The corporation [~~is authorized to~~] may waive any of
11 the restrictions set forth in this section in order to comply
12 with or conform to requirements set forth in federal law or
13 regulations governing mortgage insurance or guarantee programs
14 or requirements set forth by federally chartered secondary
15 mortgage market participants.

16 (j) Notwithstanding any law to the contrary, if real
17 property is purchased by a qualified nonprofit housing trust
18 pursuant to subsection (b), the housing trust shall establish
19 new buyback restrictions for the purpose of maintaining the unit
20 as affordable for as long as practicable, or as otherwise
21 required by the corporation.



1 (k) A qualified nonprofit housing trust shall report the
2 status and use of its housing units to the corporation by
3 November 30 of each calendar year.

4 (l) This section shall not apply to any transfers of
5 Hawaiian home lands under the Hawaiian Homes Commission Act,
6 1920, as amended, as any such transfers shall be governed by the
7 provisions of that Act, including but not limited to lease
8 conditions stipulating that the lease shall be for a term of
9 ninety-nine years."

10 SECTION 2. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

12 SECTION 3. This Act shall take effect on July 1, 3000;
13 provided that the amendments made to section 201H-47, Hawaii
14 Revised Statutes, by section 1 of this Act shall not be repealed
15 when that section is reenacted on June 30, 2028, pursuant to
16 section 5 of Act 92, Session Laws of Hawaii 2023.



Report Title:

Housing Development Programs; HHFDC; Restrictions on Transfer;
Hawaiian Home Lands; Exception

Description:

Exempts transfers of Hawaiian Home Lands from transfer
restrictions for real property under housing development
programs of the Hawaii Housing Finance and Development
Corporation. Effective 7/1/3000. (SD1)

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