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# A BILL FOR AN ACT

RELATING TO HOUSING.

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

1           SECTION 1. Section 201H-47, Hawaii Revised Statutes, is  
2 amended by amending subsections (a) and (b) to read as follows:  
3           "(a) The following restrictions shall apply to the  
4 transfer of real property developed and sold under this chapter,  
5 whether in fee simple or leasehold:  
6           (1) For a period of ten years after the purchase, whether  
7           by lease, assignment of lease, deed, or agreement of  
8           sale, if the purchaser wishes to transfer title to the  
9           real property, the corporation shall have the first  
10          option to purchase the real property at a price that  
11          shall not exceed the sum of:  
12          (A) The original cost to the purchaser, as defined in  
13          rules adopted by the corporation;  
14          (B) The cost of any improvements added by the  
15          purchaser, as defined in rules adopted by the  
16          corporation;



1 (C) Simple interest on the original cost and capital  
2 improvements to the purchaser at the rate of one  
3 per cent [a] per year; and

4 (D) [~~The corporation's share of net appreciation in~~  
5 ~~the real property, as determined under rules~~  
6 ~~adopted pursuant to chapter 91, when applicable,]~~  
7 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 either:

11 (A) By conveyance free and clear of all mortgages and  
12 liens; or

13 (B) By conveyance subject to existing mortgages and  
14 liens.

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



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

6 The corporation's interest created by this  
7 section shall constitute a statutory lien on the real  
8 property and shall be superior to any other mortgage  
9 or lien, except for[+

10 ~~(i)~~ ~~Any~~ any first mortgage created for the  
11 purpose of securing the payment of a loan of  
12 funds expended solely for the purchase of  
13 the real property by the seller;

14 ~~[(ii)~~ ~~Any~~ any mortgage insured or held by a  
15 federal housing agency; and

16 ~~[(iii)~~ ~~Any~~ any mortgage or lien created for any  
17 other purpose; provided that the corporation  
18 has previously consented to it in writing.

19 The amount paid by the corporation to the seller shall  
20 be the difference, if any, between the purchase price  
21 determined by paragraph (1) (A) to ~~[(C),]~~ (D), and the



- 1 total of the outstanding principal balances of the  
2 mortgages and liens assumed by the corporation;
- 3 (3) A purchaser may refinance real property developed and  
4 sold under this chapter; provided that the purchaser  
5 shall not refinance the real property within ten years  
6 from the date of purchase for an amount in excess of  
7 the purchase price as determined by paragraph (1) (A)  
8 to (C); provided further that the purchaser shall  
9 obtain the corporation's written consent if any  
10 restriction on the transfer of the real property  
11 remains applicable;
- 12 (4) After the end of the tenth year from the date of  
13 initial purchase or execution of an agreement of sale,  
14 the purchaser may sell the real property and sell or  
15 assign the property free from any price restrictions;  
16 provided that the purchaser shall be required to pay  
17 to the corporation the sum of:
- 18 (A) The balance of any mortgage note, agreement of  
19 sale, or other amount owing to the corporation;
- 20 (B) Any subsidy or deferred sales price made by the  
21 corporation in the acquisition, development,



1 construction, and sale of the real property, and  
2 any other amount expended by the corporation not  
3 counted as costs under section 201H-45 but  
4 charged to the real property by good accounting  
5 practice as determined by the corporation whose  
6 books shall be prima facie evidence of the  
7 correctness of the costs;

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



1 first option to purchase the real property at a  
2 price that shall not exceed the sum as computed  
3 under paragraphs (1) and (2); and

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

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

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

16 (A) Shall apply when the sales price of the real  
17 property that is developed and sold under this  
18 chapter is less than the then-current,  
19 unencumbered, fair market value of the real  
20 property, as determined by a real property



1 appraisal obtained prior to the closing of the  
2 sale;

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

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

9 (b) If the corporation waives its first option to  
10 repurchase the real property provided in subsection (a), a  
11 qualified nonprofit housing trust shall have the option to  
12 purchase the real property at ~~[the price and in the manner set~~  
13 ~~forth in subsection (a).]~~ a price that shall not exceed the sum  
14 of:

- 15 (1) The original cost to the purchaser, as defined in
- 16 rules adopted by the corporation;
- 17 (2) The cost of any improvements added by the purchaser,
- 18 as defined in rules adopted by the corporation;
- 19 (3) Simple interest on the original cost and capital
- 20 improvements to the purchaser at the rate of one per
- 21 cent per year; and



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

4            SECTION 2. Act 159, Session Laws of Hawaii 2017, is  
5 amended by amending section 8 to read as follows:

6            "SECTION 8. [~~This Act does not affect rights and duties~~  
7 ~~that matured, penalties that were incurred, and proceedings that~~  
8 ~~were begun before its effective date.] This Act shall not affect  
9 rights, duties, and obligations that have matured through a  
10 signed contract or disclosure by way of a preliminary offering  
11 statement filed with the real estate commission before its  
12 effective date."~~

13            SECTION 3. Statutory material to be repealed is bracketed  
14 and stricken. New statutory material is underscored.

15            SECTION 4. This Act shall take effect upon its approval.



**Report Title:**

Affordable Housing; HHFDC

**Description:**

Makes technical and housekeeping amendments to Act 159, Session Laws of Hawaii 2017, to clarify the terms and applicability of the Hawaii Housing Finance and Development Corporation's (HHFDC) first option to purchase or transfer to a qualified nonprofit housing trust the first option to purchase affordable housing units developed with the Corporation's financing or assistance. Clarifies that Act 159 does not apply to any rights, duties, or obligations that were extended by the Corporation through contract or preliminary offering statement prior to Act 159's effective date. (HB2328 CD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

