
A BILL FOR AN ACT

RELATING TO AFFORDABLE HOUSING.

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

1 SECTION 1. The legislature finds that the State must take
2 proactive steps to preserve the long-term affordability of
3 government-assisted for-sale housing units. Currently,
4 affordability restrictions for these housing units expire after
5 ten years, at which point the units may be sold at market rates.
6 This undermines the State's investment in housing subsidies and
7 exacerbates the housing shortage. To address this, the
8 legislature finds it necessary to establish a framework for the
9 designation and regulation of permanently affordable for-sale
10 housing, including price indexing that allows homeowners to
11 build equity while preserving affordability across generations,
12 to apply to a majority of units developed under section 201H-38,
13 Hawaii Revised Statutes, and to replace the existing ten-year
14 buyback requirements and other requirements pursuant to section
15 201H-47, Hawaii Revised Statutes.

16 The purpose of this Act is to:



1 (1) Authorize the Hawaii housing finance and development
2 corporation to designate certain for-sale units as
3 permanently affordable housing, subject to certain
4 restrictions; and

5 (2) Clarify that certain resale and occupancy restrictions
6 apply only to projects developed prior to a certain
7 date.

8 SECTION 2. Chapter 201H, Hawaii Revised Statutes, is
9 amended by adding a new section to be appropriately designated
10 and to read as follows:

11 "§201H- _____ Permanently affordable for-sale housing;
12 designation; resale restrictions. (a) The corporation may
13 designate a for-sale housing unit as permanently affordable if
14 the unit is:

15 (1) Developed or assisted by the corporation; and
16 (2) Sold to an eligible buyer under criteria established
17 by the corporation by rule.

18 (b) Any unit designated as permanently affordable under
19 this section shall be:

20 (1) Sold to a qualified resident as defined in section
21 201H-32; provided that no later than one year after



1 the purchase of a unit pursuant to this section, an
2 eligible buyer shall be:

3 (A) A person who either by the person's self, or
4 together with spouse or household member, does
5 not own a majority interest in fee simple or
6 leasehold lands suitable for dwelling purposes or
7 a majority interest in lands under any trust
8 agreement or other fiduciary arrangement in which
9 another person holds the legal title to the land;
10 and

11 (B) A person whose spouse or household member does
12 not own a majority interest in fee simple or
13 leasehold lands suitable for dwelling purposes or
14 more than a majority interest in lands under any
15 trust agreement or other fiduciary arrangement in
16 which another person holds the legal title to the
17 land, except when a married couple is living
18 apart under a decree of separation from bed and
19 board issued by the family court pursuant to
20 section 580-71;

21



- 1 (2) Subject to resale only with the written approval of
2 the corporation, which may exercise its first option
3 to purchase or assign the unit to another qualified
4 purchaser;
- 5 (3) Prohibited from being used as a short-term rental,
6 including rental periods of less than ninety days;
- 7 (4) Restricted by a resale price formula or index
8 established by the corporation's program agreement,
9 which may include the Honolulu Housing Affordability
10 Index or other reasonable affordability measure;
- 11 (5) Enforced through deed restrictions, covenants, or
12 other legal instruments recorded against the unit;
- 13 (6) Subject to additional terms and conditions as
14 established by rule under chapter 91; and
- 15 (7) Subject to waiver or extinguishment of restrictions as
16 provided in the program agreement, to protect the
17 rights of the first mortgagee, or as otherwise
18 authorized by the corporation to preserve the intent
19 of the program or comply with federal law.
- 20 (c) The restrictions prescribed in this section shall be
21 automatically extinguished and shall not attach in subsequent



1 transfers of title when a mortgage holder or other party becomes
2 the owner of any permanently affordable unit pursuant to a
3 mortgage foreclosure, foreclosure under power of sale, or a
4 conveyance in lieu of foreclosure after a foreclosure action is
5 commenced.

6 (d) The corporation shall adopt rules under chapter 91 to
7 implement this section, including but not limited to:

- 8 (1) Criteria for designation and eligibility; and
- 9 (2) Procedures for resale and transfer of ownership."

10 SECTION 3. Section 201H-32, Hawaii Revised Statutes, is
11 amended by amending the definition of "qualified resident" to
12 read as follows:

13 "Qualified resident" means a person who:

- 14 (1) Is a citizen of the United States or a resident alien;
- 15 (2) Is at least eighteen years of age; and
- 16 (3) Is domiciled in the State and physically resides in
17 the dwelling unit purchased or rented under this
18 chapter[+]
- 19 ~~(4) In the case of the purchase of real property in fee~~
20 ~~simple or leasehold, has a gross income sufficient to~~
21 ~~qualify for the loan to finance the purchase; or in~~



1 ~~the case of a rental, demonstrates an ability to pay~~
2 ~~rent as determined by the corporation and meets any~~
3 ~~additional criteria established by the corporation for~~
4 ~~the respective rental housing development for which~~ .
5 ~~the applicant is applying; and~~
6 ~~(5) Meets the following qualifications:~~
7 ~~(A) Is a person who either by the person's self, or~~
8 ~~together with spouse or household member, does~~
9 ~~not own a majority interest in fee simple or~~
10 ~~leasehold lands suitable for dwelling purposes or~~
11 ~~a majority interest in lands under any trust~~
12 ~~agreement or other fiduciary arrangement in which~~
13 ~~another person holds the legal title to the land;~~
14 ~~and~~
15 ~~(B) Is a person whose spouse or household member does~~
16 ~~not own a majority interest in fee simple or~~
17 ~~leasehold lands suitable for dwelling purposes or~~
18 ~~more than a majority interest in lands under any~~
19 ~~trust agreement or other fiduciary arrangement in~~
20 ~~which another person holds the legal title to the~~
21 ~~land, except when husband and wife are living~~



1 ~~apart under a decree of separation from bed and~~
2 ~~board issued by the family court pursuant to~~
3 ~~section 580-71,~~
4 ~~provided that for purchasers of market-priced units in an~~
5 ~~economically integrated housing project, the term "qualified~~
6 ~~resident" means a person who is a citizen of the United States~~
7 ~~or a resident alien; is domiciled in the State and shall~~
8 ~~physically reside in the dwelling unit purchased; is at least~~
9 ~~eighteen years of age; and meets other qualifications as~~
10 ~~determined by the developer]."~~

11 SECTION 4. Section 201H-47, Hawaii Revised Statutes, is
12 amended by amending subsection (a) to read as follows:

13 "(a) The following restrictions shall apply to the
14 transfer of real property developed and sold under this
15 chapter[7] before _____, whether in fee simple or
16 leasehold:

17 (1) For a period of ten years after the purchase, whether
18 by lease, assignment of lease, deed, or agreement of
19 sale, if the purchaser wishes to transfer title to the
20 real property, the corporation shall have the first



1 option to purchase the real property at a price that
2 shall not exceed the sum of:

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

5 (B) The cost of any improvements added by the
6 purchaser, as defined in rules adopted by the
7 corporation;

8 (C) Simple interest on the original cost and capital
9 improvements to the purchaser at the rate of one
10 per cent per year; and

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

14 (2) The corporation may purchase the real property either:

15 (A) By conveyance free and clear of all mortgages and
16 liens; or

17 (B) By conveyance subject to existing mortgages and
18 liens.

19 If the real property is conveyed in the manner
20 provided in subparagraph (A), it shall be conveyed to
21 the corporation only after all mortgages and liens are



1 released. If the real property is conveyed in the
2 manner provided in subparagraph (B), the corporation
3 shall acquire the real property subject to any first
4 mortgage created for the purpose of securing the
5 payment of a loan of funds expended solely for the
6 purchase of the real property by the seller; and any
7 mortgage or lien created for any other purpose;
8 provided that the corporation has previously consented
9 to it in writing.

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



1 determined by paragraph (1) (A) to (D), and the total
2 of the outstanding principal balances of the mortgages
3 and liens assumed by the corporation;

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

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

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



- 1 (B) Any subsidy or deferred sales price made by the
2 corporation in the acquisition, development,
3 construction, and sale of the real property, and
4 any other amount expended by the corporation not
5 counted as costs under section 201H-45 but
6 charged to the real property by good accounting
7 practice as determined by the corporation whose
8 books shall be prima facie evidence of the
9 correctness of the costs;
- 10 (C) Interest on the subsidy or deferred sales price,
11 if applicable, and any other amount expended at a
12 rate established by the corporation computed as
13 to the subsidy or deferred sales price, if
14 applicable, from the date of purchase or
15 execution of the agreement of sale, and as to any
16 amount expended, from the date of expenditure;
17 provided that the computed interest shall not
18 extend beyond thirty years from the date of
19 purchase or execution of the agreement of sale of
20 the real property. If any proposed sale or
21 transfer will not generate an amount sufficient



1 to pay the corporation the sum as computed under
2 this paragraph, the corporation shall have the
3 first option to purchase the real property at a
4 price that shall not exceed the sum as computed
5 under paragraphs (1) and (2); and

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

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

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

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



1 property, as determined by a real property
2 appraisal obtained prior to the closing of the
3 sale;

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

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

10 SECTION 5. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

12 SECTION 6. This Act shall take effect on July 1, 3000;
13 provided that the amendments made to section 201H-47, Hawaii
14 Revised Statutes, by this Act shall not be repealed when that
15 section is reenacted on June 30, 2028, pursuant to section 5 of
16 Act 92, Session Laws of Hawaii 2023.



Report Title:

Hawaii Housing Finance and Development Corporation; Permanently Affordable For-Sale Housing; Resale Restrictions; Criteria

Description:

Authorizes HHFDC to designate certain for-sale units as permanently affordable housing, subject to certain restrictions. Clarifies that certain resale and occupancy restrictions apply only to projects developed prior to a certain date. Amends the definition of "qualified resident" for the purposes of HHFDC housing development programs. Effective 7/1/3000. (SD1)

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