

ACT 139

H.B. NO. 1870-78

A Bill for an Act Relating to Alternative Mortgage Instruments.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that although alternative residential mortgage financing instruments which have been developed in recent years may allow many families to qualify for homeownership who would not qualify under conventional loan standards, statutory requirements relative to reductions in loan principal and to usury do not allow such alternative instruments.

For the past forty years most home purchases have been financed by long-term, fixed rate, equal monthly payment, fully amortizing mortgage loans, commonly called direct reduction mortgages, which worked well in times of fairly stable interest rates and little or no anticipated inflation. Current housing costs coupled with higher interest rates have risen at a faster rate than personal income increases, and one method of increasing homeownership is the use of alternative instruments which lower mortgage payments in the earlier years of the mortgage contracts and increase payments as the borrower's ability to pay and the value of the mortgage security both increase.

Inflation imposes a burden on elderly homeowners whose principal asset is equity in a home either debt free or with a minimal remaining loan balance. An alternative mortgage instrument, the reverse mortgage annuity, has been developed to enable the elderly to realize portions of their equity to meet increasing costs of living while continuing to occupy their residences.

It is the purpose of this Act to permit and encourage financial institutions in the State to utilize the concepts of alternative mortgage instruments to qualify more residents for residential mortgage loans and to assist the elderly in meeting living costs while retaining their homes.

SECTION 2. Chapter 402, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"Sec. 402- Alternative mortgage instruments, rules and regulations. The bank examiner shall issue rules and regulations defining and governing the utilization of alternative mortgage instruments."

SECTION 3. Section 407-83, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 407-83 Real estate loans, ordinary. Ordinary loans shall be made only on home property in the State, and shall be secured by mortgage on real estate

and improvements of the home, which improvements may include household fixtures and appliances, the mortgage not to exceed eighty per cent of the unencumbered appraised value thereof.

Payments on real estate loans shall be applied monthly, quarterly, or semiannually as set forth in each mortgage and promissory note, first to the payment of interest on the unpaid balance of the loan, the remainder to the reduction of the loan[;], unless the manner and application of payments and the loan disbursement and treatment of loan interest are governed by an alternative mortgage instrument as approved by the bank examiner in section 402- ; provided that if the loan is in default in any manner, payments may be applied by the mortgagee in any manner approved by the bank examiner. Every loan shall be evidenced by a note or bond for the amount of the loan. The note or bond shall specify the amount, rate of interest, terms of repayment, and may contain all other terms of the loan contract.

First lien mortgages. Every real estate loan shall be secured by a mortgage or other instrument constituting a first lien, or the full equivalent thereof, upon the real estate securing the loan, according to any lawful or well recognized practice, which is best suited to the transaction. Any such instrument, constituting a first lien, is herein termed a "mortgage". The mortgage shall provide specifically for full protection to the association with respect to usual insurance risks, taxes, assessments, other governmental levies, maintenance, and repairs. It may provide for an assignment of rents, which assignment shall be valid. It may also provide that household fixtures and appliances shall be a portion of the security for the loan. Except as otherwise provided in chapter 490, Article 9, Secured Transactions, of the Uniform Commercial Code, every such mortgage or other instrument shall create, and preserve to the association a first lien, which shall equally secure the original loan and each and every subsequent advance and loan in any amount and for any purpose by the association to the borrower. No subsequent loan to the borrower by any other person shall establish an intervening lien, which shall disturb the first lien of such association as security for every advance and loan made to the borrower. All such mortgages shall be recorded in accordance with the law of this State.

Protective payments, charges; records; reserves. An association may pay taxes, assessments, insurance premiums, and other similar charges for the protection of its real estate loans. All the payments shall be added to the unpaid balance of the loan and shall be equally secured by the first lien on the property. An association may require the borrower to pay monthly in advance the equivalent of one-twelfth of the estimated annual taxes, assessments, insurance premiums, and other charges upon the real estate securing the loan, or any of such charges, so as to enable the association to pay such charges as they become due from the funds so received. The amount of the monthly charges may be increased or decreased so as to provide reasonably for the payment of the estimated annual taxes, assessments, insurance premiums, and other charges. Every association shall keep a record of the status of taxes, assessments, insurance premiums, and other charges on all real estate securing its loans and on all real and other property owned by it. All real estate loans may be prepaid, in part or in full, at any time,

and the association shall not charge for the privilege of anticipatory payment an amount greater than one per cent of the amount of the anticipatory payment.

An association, by agreement with the debtor, may modify the terms of any real estate loan so that such loan shall be an amortized loan, and incident thereto may credit on the debt the book value of mortgage loan shares or accounts pledged as security for such real estate loan.

If the value of the property securing the loan depreciates or otherwise is found to be below the margin of excess over face value of the loan required by this section, the association may be permitted to hold the same upon such conditions as the bank examiner in writing may prescribe provided a reserve, in addition to the reserve otherwise required by law, is set up by the association sufficient to cover the amount of the deficiency."

SECTION 4. Section 478-10, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 478-10 Exemptions of certain mortgage loans. The provisions of this chapter shall not apply to [any]:

- (1) Any mortgage loan wholly or partially secured by a guarantee or insurance or a commitment to insure issued under the provisions of the National Housing Act, Chapter 13 of Title 12 of the United States Code, the Veterans Benefit Act, subchapters I and II of Chapter 37 of Title 38 of the United States Code, and subchapter III of Chapter 8A of Title 42 of the United States Code [.] or
- (2) Any mortgage loan wholly or partially secured by an alternative mortgage instrument is approved by the bank examiner in section 402-

SECTION 5. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.

SECTION 6. This Act shall take effect upon its approval.

(Approved May 30, 1978.)