

ACT 259

H.B. NO. 3117-82

A Bill for an Act Relating to Housing Cooperatives.

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

SECTION 1. The Hawaii Revised Statutes, is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
LIMITED-EQUITY HOUSING COOPERATIVES**

§ -1 Definitions. As used in this chapter, unless otherwise indicated by the context:

- (1) "Corporate equity" means the excess of the current fair market value of the corporation's assets, including its real property, over the sum of the current transfer values of all shares or membership interests, reduced by the principal balance of outstanding encumbrances upon the corporate real property as a whole.
- (2) "Limited-equity housing cooperative" means a stock cooperative corporation which is organized as a nonprofit corporation under sections 416-19 and 416-26 for the purpose of holding title to, either in fee simple or for a term of years, improved real property, if all or substantially all of the shareholders of such corporation receive a right of exclusive occupancy in a portion of the real property, title to which is held by the corporation, which right of occupancy is transferable only concurrently with the transfer of the share or shares of stock in the corporation held by the person having such right of occupancy; provided the corporation also:
 - (A) Is organized so that the consideration paid for an individual membership share by the first occupant following construction or acquisition by the corporation, including the principal amount of obligation incurred to finance the membership share, does not exceed seven per cent of the respective dwelling unit's development cost, acquisition cost, or of the fair market value appraisal by the permanent lender, whichever is greater; and
 - (B) Holds title to real property as the beneficiary of a trust providing for distribution for public or charitable purposes upon termination of the trust; or
 - (C) Holds title to real property subject to conditions which will result in reversion to a public or charitable entity for affordable housing upon dissolution of the corporation; or
 - (D) Holds a leasehold interest conditioned on the corporation's continued qualification under this chapter and providing for reversion to a public entity or charitable corporation for affordable housing.

§ -2 Charter of incorporation. (a) The charter of incorporation and bylaws shall require the purchase and sale of the stock of resident owners who cease to be residents, at not more than a transfer value determined as provided in the charter and bylaws, and which shall not exceed the aggregate of the following:

- (1) The consideration paid for the membership share by the first occupant of the unit involved, as shown on the books of the corporation.
 - (2) Accumulated interest, or an inflation allowance at a rate which may be based on a cost-of-living index, an income index, or market-interest index. Any increment pursuant to this paragraph shall not exceed a ten per cent annual increase on the consideration paid for the membership or share by the first occupant of the unit involved.
 - (3) The value, as determined by the board of directors of the corporation, of any improvements installed at the expense of the member with the prior approval of the board of directors.
 - (4) No other charges, fees, premiums, taxes, or payments or exchanges of any kind may be imposed, assessed or made a condition of any transfer.
- (b) The charter of incorporation and bylaws shall require the board of

directors or corporate members to sell the stock purchased as provided in subsection (a), to new resident shareholders at a price which does not exceed the transfer value paid for the unit. Upon termination or dissolution of the corporation, the then existing stockholders shall be paid an amount that does not exceed the transfer value of their share.

(c) Amendment of the charter of incorporation shall require the affirmative vote of at least two-thirds of the resident shareholders.

(d) The charter of incorporation and bylaws shall require:

- (1) The corporation issue only one class of stock;
- (2) One share shall be issued for each dwelling unit in the cooperative;
- (3) Voting rights shall be based upon one share, one vote; and
- (4) Each shareholder shall be a resident of the unit represented by the share held.

(e) The charter of incorporation and bylaws shall require a provision that there shall not be any social, political, racial, or religious discrimination nor any discrimination on the basis of age, sex, marital or parental status, subject only to limitations under applicable federal, state, or county laws, rules, or regulations.

§ -3 Contents of bylaws. The bylaws shall provide at least the following:

- (1) The election of a board of directors, the number of persons constituting the board, and that the terms of at least one-third of the directors shall expire annually; the powers and duties of the board; the method of removal from office of directors; and whether or not the board may engage in services of a manager or managing agent, or both, and specifying which of the powers and duties granted to the board by this chapter or otherwise may be delegated by the board to either or both of them.
- (2) Method of calling meetings of the shareholders; what percentage, if other than a majority of shareholders constitutes a quorum; and what percentage, consistent with this chapter, is necessary to adopt decisions binding on all shareholders.
- (3) Election of a president from among the board of directors who shall preside over the meetings of the board of directors.
- (4) Election of a secretary who shall keep the minute book wherein resolutions shall be recorded.
- (5) Election of a treasurer who shall keep the financial records and books of account.
- (6) Operation of the property; determination and collection of monthly carrying charge for each unit.
- (7) Designation and removal of personnel necessary for maintenance and repair.
- (8) Method of adopting and amending administrative rules and regulations governing the details of the operation and use of corporate property.
- (9) Two-thirds of the shareholders may at any time modify or amend the bylaws, but each one of the particulars set forth in this section shall always be embodied in the bylaws.
- (10) All members of the board of directors except for initial provisional

directors shall be shareholders. There shall not be more than one representative on the board of directors from any one dwelling unit.

- (11) A director shall not vote at any board meeting on any issue in which the director has a conflict of interest.
- (12) No employees of the cooperative shall serve on the board of directors.
- (13) The board of directors shall meet at least once a year.
- (14) Notices of shareholder's meetings, whether annual or special, shall be delivered to each shareholder at least fourteen days prior to such meeting, and shall contain at least: the date and time of such meeting; the place of such meeting; and the items on the agenda of such meetings.
- (15) All board of directors' meetings shall be conducted in accordance with Roberts Rules of Order, or other accepted rules for the conduct of meetings.
- (16) The shareholders may require, by vote at the annual meeting, a yearly audit of the corporate books by a certified public accountant.
- (17) Notice of the annual board meeting shall be given in a reasonable manner at least fourteen days, if practicable, prior to such meeting.
- (18) That the minutes of meetings of the board of directors, shareholders, and the corporation's financial statements shall be available for examination by shareholders at convenient hours at a place designated by the board.

§ -4 **Use of corporate equity.** (a) The corporate equity shall not be used for distribution to members, but only for the following purposes, and only to the extent authorized by the board, subject to the provisions and limitations of the charter of incorporation and bylaws:

- (1) For the benefit of the corporation or the improvement of the real property, including its use as collateral for loans authorized under section 403-98.
- (2) For expansion of the corporate equity by acquisition of additional interest in real property for purposes consistent with its charter.
- (3) For public benefit or charitable purposes.
- (b) Upon sale of the property, dissolution of the corporation, or occurrence of a condition requiring termination of the trust or reversion of title to the real property, the corporate equity shall be required by the charter, bylaws, or trust or title conditions to be paid out, or title to the property transferred, subject to outstanding encumbrances and liens, and the transfer value of membership shares, for use for a public or charitable purpose.

(c) The membership shares and cooperative fees are interests in real property for purposes of:

- (1) Cooperative housing corporations under section 216 of the federal Internal Revenue Code of 1954, as amended;
- (2) Exemption from state general excise tax under section 237-24(17); and
- (3) Exemption from real property tax under sections 246-26 and 246-27(3).

§ -5 **Exemption.** No stock of any limited equity housing cooperative organized or existing under this chapter shall be subject to chapter 485."

SECTION 2. Section 416-21, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) In general. No nonprofit corporation shall have or issue shares of stock except for limited-equity housing cooperatives, and no dividends shall be paid and no part of the income of such corporation shall be distributed to its members, directors, or officers, except upon the liquidation of the property of the corporation in case of corporate dissolution. A nonprofit corporation may pay compensation in a reasonable amount to its members, directors, or officers, for services rendered, and may confer benefits upon its members in conformity with its purposes. No loans shall be made by a nonprofit corporation to its directors or officers. The directors of a nonprofit corporation who vote for or assent to the making of a loan to a director or officer of the corporation, and any officer or officers participating in the making of the loan, shall be jointly and severally liable to the corporation for the amount of the loan until the repayment thereof.”

SECTION 3. Chapter 359G, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

“PART . LIMITED-EQUITY HOUSING COOPERATIVES

§359G- Development priority. The Hawaii housing authority shall give priority to those developments which are proposed to be organized as limited-equity housing cooperatives, and where feasible shall require that developments other than single-family residences be organized as limited-equity housing cooperatives.

§359G- Qualifications for loans. The Hawaii housing authority may insure loans for the financing of limited-equity housing cooperatives; provided that at least twenty per cent of occupancy is limited to persons and families of low or moderate income.”

SECTION 4. Section 359G-1.1, Hawaii Revised Statutes, is amended by amending the definition of “eligible developer” to read:

- “(2) “Eligible developer” means any person, partnership, cooperative, firm, nonprofit or profit corporation, or public agency determined by the authority:
- (A) To be qualified by experience and financial responsibility and support to construct housing of the type described and of the magnitude encompassed by the given project;
 - (B) To have submitted plans for a project adequately meeting the objectives of this chapter, the maintenance of aesthetic values in the locale of the project, and the requirements of all applicable environmental statutes, and rules;
 - (C) To be fully capable, on the basis of experience and reputation, to complete all sales of the project in a nondiscriminatory fashion and without encountering complaints under chapters 342, 378, 396, 515, or suits under any applicable state or federal civil or human rights statute, if applicable; and
 - (D) To meet all other requisites the authority deems to be just and reasonable, and all requirements stipulated in this chapter.

“Eligible developer” includes limited-equity housing cooperatives as defined in section -1(2) which provide housing for persons and fami-

lies of low or moderate income.”

SECTION 4.¹ New statutory material is underscored.

SECTION 5.¹ This Act shall take effect upon its approval.

(Approved June 16, 1982.)

Note

1. Should be SECTIONS 5 and 6.