

A Bill for an Act Relating to Limited-Equity 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 the 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 accounts.
- (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 cast any proxy vote at any board meeting, nor shall a director 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.
- (19) A proxy shall only be valid for the meeting to which the proxy pertains and its adjournments, may designate any person as proxy, and may be limited as the shareholder desires and indicates; provided that no proxy shall be irrevocable.

§ -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 purposes.

(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 Registration and administration requirements. (a) Limited-equity housing cooperatives under this chapter shall be subject to regulation by the real estate commission.

(b) Any law to the contrary notwithstanding, limited-equity housing cooperatives under this chapter shall be subject to the same requirements, to the extent practicable, which now apply to horizontal property regimes under part III of chapter 514A with regard to notice of intent to sell, questionnaires, fees, inspections, public reports, penalties, limitations of actions, and the powers of the real estate commission to conduct investigations, issue cease and desist orders, and obtain injunctions.

(c) The real estate commission may adopt rules under chapter 91 to implement this chapter, including rules to limit or waive the applicability of certain requirements in subsection (b) which could not fairly or reasonably be applied to limited-equity housing cooperatives already in existence on the effective date of this chapter.

§ -6 Arbitration of disputes. (a) At the request of any party, any dispute concerning or involving one or more stockholders and a limited-equity housing corporation, its board of directors, managing agent, or one or more other stockholders relating to the interpretation, application or enforcement of chapter or the corporation's charter of incorporation, bylaws, or administrative rules adopted in accordance with its bylaws shall be submitted to arbitration. The arbitration shall be conducted, unless otherwise agreed by the parties, in accordance with the rules adopted by the real estate commission and the provisions of chapter 658; provided that the Horizontal Property Regime Rules on Arbitration of Disputes of the American Arbitration Association shall be used until the commission adopts its rules; provided further that where any arbitration rule conflicts with chapter 658, chapter 658 shall prevail; provided further that notwithstanding any rule to the contrary, the arbitrator shall conduct the proceedings in a manner which affords substantial justice to all parties; provided further that the

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proceedings shall be concluded ninety days after the commencement of the arbitration unless extended by mutual consent of the parties involved and their counsel. The arbitrator shall be bound by rules of substantive law and shall not be bound by rules of evidence, whether or not set out by statute, except for provisions relating to privileged communications. The arbitrator shall permit discovery as provided for in the Hawaii rules of civil procedure; provided that the arbitrator may restrict the scope of such discovery for good cause to avoid excessive delay and costs to the parties or the arbitrator may refer any matter involving discovery to the circuit court for disposition in accordance with the Hawaii rules of civil procedure then in effect.

(b) Nothing in subsection (a) shall be interpreted to mandate the arbitration of any dispute involving:

- (1) The real estate commission;
- (2) The mortgagee of a mortgage of record;
- (3) The developer, general contractor, subcontractors, or design professionals for the project; provided that when any person exempted by this paragraph is also a stockholder, a director, or managing agent, such person shall, in those capacities, be subject to the provisions of subsection (a);
- (4) Actions seeking equitable relief involving threatened property damage or the health or safety of stockholders or any other person;
- (5) Actions to collect assessments which are liens or subject to foreclosure;
- (6) Personal injury claims; or
- (7) Actions for amounts in excess of \$2,500 against a limited-equity housing corporation, a board of directors, or one or more directors, officers, agents, employees, or other persons, if insurance coverage under a policy or policies procured by the limited-equity housing corporation or its board of directors would be unavailable because action by arbitration was pursued."

SECTION 2. Chapter 421G, Hawaii Revised Statutes, is repealed.

SECTION 3. All appropriations, records, equipment, machines, files, supplies, contracts, books, papers, documents, maps, and other personal property heretofore made, used, acquired, or held by the department of commerce and consumer affairs relating to the functions transferred to the real estate commission shall be transferred with the functions to which they relate.

SECTION 4. This Act shall take effect on July 1, 1987.

(Approved May 30, 1987.)