

## ACT 264

S.B. NO. 3094

A Bill for an Act Relating to the Housing Finance and Development Corporation.

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

SECTION 1. Section 201E-2, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

“Cash equity” means the actual amount of payments of principal which the owner has made for the purpose of purchasing or improving a dwelling unit, including the cash down payment made, payments of principal on mortgage loans incurred to purchase the dwelling unit, and payments of principal for improvements which add value to the dwelling unit. The term “cash equity” does not include interest or the appreciated value of the dwelling unit caused by market fluctuation.”

SECTION 2. Section 201E-2, Hawaii Revised Statutes, is amended by amending the definition of “qualified resident” to read as follows:

“Qualified resident” means a person who:

- (1) Is a citizen of the United States or a resident alien;
- (2) Is at least eighteen years of age;
- (3) Is [a bona fide resident of] domiciled in the State and has a bona fide intent to reside in the dwelling unit purchased or rented under this chapter;

- (4) In the case of purchase of a dwelling unit in fee simple or leasehold, has a gross income sufficient to qualify for the loan to finance the purchase; and
- (5) Is not found by the corporation to be within one of the following classes:
  - (A) A person who oneself or whose husband or wife or both [(when husband and wife are living together)] (unless husband and wife are living apart under a decree of separation from bed and board issued by the family court pursuant to section 580-71) owns or own in fee simple or leasehold any lands suitable for dwelling purposes; or
  - (B) A person who oneself or whose husband or wife [(when husband and wife are living together)] (unless husband and wife are living apart under a decree of separation from bed and board issued by the family court pursuant to section 580-71) has pending another unrefused application to purchase a dwelling unit under this chapter from the corporation[.];

provided that for purchasers of market-priced units in an economically integrated housing project, the term "qualified resident" means a person who is a citizen of the United States or a resident alien; is domiciled in the State; is at least eighteen years of age; and meets other qualifications as determined by the developer."

SECTION 3. Section 201E-220, Hawaii Revised Statutes, is amended to read as follows:

**“[§201E-220] Sale, mortgages, agreement of sale, other instruments. (a)**

The corporation shall sell completed dwelling units or dwelling units which are substantially completed and habitable, developed and constructed hereunder, to qualified residents in fee simple, or shall cause them to be leased or rented to qualified residents, at a price or rental based on costs as determined by the corporation; provided that the corporation may retain such units as necessary in a project for lease or rental to nonprofit community organizations for community activity or facility purposes. The gross share to the other partners or contract payments and any amounts subsidized by the State, including but not limited to the land, need not be counted as cost so as to increase the price. Such may be borne by the State, under rules subject to reimbursement upon sale as provided for in section 201E-221.

(b) If a qualified purchaser is unable to obtain sufficient funds at reasonable rates from private lenders, the corporation, by way of mortgage, agreement of sale, or other instrument to secure the indebtedness, may loan to the purchaser up to one hundred per cent of the purchase price. The purchaser in such event shall execute with the corporation an agreement of sale or mortgage or other instrument under the terms of which the unpaid principal and the interest thereon shall be paid in monthly installments over a period of not more than forty years.

(c) Every mortgage, agreement of sale, other instrument to secure the indebtedness, or instrument of indebtedness executed by the corporation may contain such other provisions as are usually found in such instruments and shall provide that the purchaser may repay the whole or any part of the unpaid balance of the purchase price plus accrued interest at any time without prepayment penalty.

(d) If the purchaser defaults on the payment of any loan, the corporation shall take all necessary action to collect the delinquent principal and interest on

the loan and may take all actions allowed to holders of obligations, including the power to repossess, lease, rent, repair, renovate, modernize, and sell the property foreclosed, subject to the restrictions hereinafter described.

(e) The mortgages, agreements of sale, and other instruments of indebtedness may, at the direction of the corporation, be assigned to and serviced by commercial banks and other lending institutions doing business in the State at a fee of not more than one-half of one per cent of the amount loaned to the purchaser.

(f) Subsections (a), (b), (c), (d), and (e) need not apply to market-priced units in an economically integrated housing project, except as otherwise determined by the developer of the units; provided that preference shall be given to qualified residents in the sale of market-priced units.

SECTION 4. Section 201E-221, Hawaii Revised Statutes, is amended to read as follows:

**“§201E-221 Dwelling units; restrictions on transfer, waiver [or] of restrictions.** (a) [Except for dwelling units which are financed under a federally subsidized mortgage program, the] The following restrictions shall apply to the transfer of dwelling units purchased from the corporation, whether on fee simple or leasehold property:

- (1) For a period of ten years after the purchase, whether by lease, assignment of lease, deed, or agreement of sale, if the purchaser wishes to transfer title to the dwelling unit and the property or the lease, the corporation shall have the first option to purchase the unit and property or lease at a price which shall not exceed the sum of:
  - (A) The original cost to the purchaser[;], as defined in rules adopted by the corporation;
  - (B) The cost of any improvements added by the purchaser[; and], as defined in rules adopted by the corporation; and
  - (C) Simple interest on the purchaser's cash equity [in the property] at the rate of seven per cent a year.

The corporation may purchase the unit either outright, free and clear of all liens and encumbrances, or by transfer subject to an existing mortgage.

If by outright purchase, the corporation shall [insure] ensure that all existing mortgages, liens, and encumbrances are [satisfactorily] fully paid [by the purchaser].

In any purchase by transfer subject to an existing mortgage, the corporation shall agree to assume and to pay the [balance] seller's obligation on any first mortgage created for the purpose of enabling the purchaser to obtain funds for the purchase of the unit and any other mortgages which were created with the approval and consent of the corporation. In such cases, the amount to be paid to the [purchaser] seller by the corporation shall be the difference between the above-mentioned price and the principal balance of all mortgages outstanding and assumed at the time of transfer of title to the corporation.

- (2) After the end of the tenth year from the date of purchase, or execution of an agreement of sale, the purchaser may sell the unit and sell or assign the property to any [person] qualified resident free from any price restrictions; provided that the purchaser shall be required to pay to the corporation the sum of:

- (A) The balance of any mortgage note, agreement of sale, or other amount owing to the corporation;
  - (B) Any subsidy or deferred sales price made by the corporation in the acquisition, development, construction, and sale of the unit, and any other amount expended by the corporation not counted as cost under section 201E-220 but charged to the dwelling unit by good accounting practice as determined by the corporation whose books shall be prima facie evidence of the correctness of the costs; and
  - (C) Interest on the subsidy or deferred sales price, if applicable, and any other amount expended at the rate of seven per cent a year computed as to the subsidy[,] or deferred sales price, if applicable, from the date of purchase, or execution of the agreement of sale, and as to any amount expended, from the date of expenditure; provided that the computed interest shall not extend beyond thirty years from the date of purchase, or execution of the agreement of sale, of the unit; and provided that if any proposed sale or transfer will not generate an amount sufficient to pay the corporation the sum as computed under this paragraph, the corporation shall have the first option to purchase the dwelling unit at a price which shall not exceed the sum as computed under paragraph (1).
- (3) Notwithstanding any provision above to the contrary, pursuant to rules adopted by the corporation, the subsidy or deferred sales price described in subsection (a)(2)(B) and any interest accrued pursuant to subsection (a)(2)(C) may be paid, in part or in full, at any time.
- (b) The corporation may waive the restrictions prescribed in subsection (a) [may be waived] if:
- (1) The purchaser wishes to transfer title to the dwelling unit and the property or lease by devise or through the laws of descent to a family member who would otherwise qualify under rules established by the corporation; or
  - (2) The dwelling unit is financed under a federally subsidized mortgage program and the restrictions would jeopardize the federal government's ability to recapture any interest credit subsidies provided to the homeowner; or
- [(2)] (3) The corporation determines, in accordance with [adopted rules,] rules adopted by the corporation, that the sale or transfer of a dwelling unit would be at a price and upon terms that [preserves] preserve the intent of this section without the necessity of the State [to repurchase] repurchasing the unit[.]; provided that, in this case, the purchaser shall sell the unit and sell or assign the property to a person who is a "qualified resident" as defined in section 201E-2.
- (c) The restrictions prescribed in subsection (a) shall be automatically extinguished and shall not attach in subsequent transfers of title when a mortgage holder or other party becomes the owner of the dwelling unit and the land or leasehold interest pursuant to a mortgage foreclosure, foreclosure under power of sale, or a conveyance in lieu of foreclosure after a foreclosure action is commenced. Any law to the contrary notwithstanding, a mortgagee under a mortgage covering a dwelling unit and land or leasehold interest encumbered by the first option to purchase in favor of the corporation, prior to commencing mortgage foreclosure proceedings, shall notify the corporation of (1) any default of the mortgagor under the mortgage within ninety days after the occurrence of the default, and (2) any intention of the mortgagee to foreclose the mortgage

under chapter 667. The corporation shall be a party to any foreclosure action, and shall be entitled to all proceeds remaining in excess of all customary and actual costs and expenses of transfer pursuant to default, including liens and encumbrances of record; provided that the person in default shall be entitled to an amount which shall not exceed the sum of amounts determined pursuant to subsections (a)(1)(B) and (C) [and the purchaser's equity in the property].

(d) The provisions of this section shall be incorporated in any deed, lease, mortgage, agreement of sale, or any other instrument of conveyance issued by the corporation. In any sale by the corporation of a dwelling unit for which a subsidy or deferred sales price was made by the corporation, the amount of the subsidy or deferred sales price described in subsection (a)(2)(B), a description of the cost items which constitute the subsidy[,] or deferred sales price, and the conditions of the subsidy or deferred sales price shall be clearly stated at the beginning of the contract document issued by the corporation.

(e) Any subsequent sale or transfer of dwelling units and sale, lease, or assignment of the property by the corporation or purchaser pursuant to this chapter shall be made to qualified residents.

(f) Subsections (a), (b), (c), (d), and (e) need not apply to market-priced units in an economically integrated housing project, except as otherwise determined by the developer of the units; provided that preference shall be given to qualified residents in the sale of market-priced units."

SECTION 5. Section 201E-222, Hawaii Revised Statutes, is amended to read as follows:

**"§201E-222 Dwelling units; restrictions on use.** (a) A dwelling unit purchased [from the corporation] under this chapter shall be occupied by the purchaser at all times [during the ten-year restriction period set forth in section 201E-221].

(b) From time to time the corporation may submit a verification of owner-occupancy form to the purchaser. Failure to respond to the verification in a timely manner or violation of subsection (a) shall be sufficient reason for the corporation, at its option, to purchase the unit as provided in section 201E-221(a)(1) or (2), as applicable.

(c) Any deed, lease, agreement of sale, mortgage, or other instrument of conveyance issued by the corporation shall expressly contain the restrictions on use prescribed in this section.

(d) The restrictions prescribed in subsection (a) shall be automatically extinguished and shall not attach in subsequent transfers of title as prescribed in section 201E-221(b) [and (c)].

(e) Subsections (a), (b), and (c) need not apply to market-priced units in an economically integrated housing project, except as otherwise determined by the developer of the units; provided that preference shall be given to qualified residents in the sale of market-priced units."

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval.

(Approved June 25, 1990.)