

ACT 66

S.B. NO. 1249

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 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 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 (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 (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;]

Either oneself or together with spouse does not own a majority interest in fee simple or leasehold lands suitable for dwelling purposes, and whose spouse does not own a majority interest in fee simple or

leasehold lands suitable for dwelling purposes, except when 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;

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 2. Section 201E-220, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

"(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 initial sale of market-priced units."

SECTION 3. Section 201E-221, Hawaii Revised Statutes, is amended to read as follows:

"§201E-221 Dwelling units; restrictions on transfer, waiver or restrictions. (a) The following restrictions shall apply to the transfer of dwelling units [purchased from the corporation,] developed and sold under this chapter, 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, as defined in rules adopted by the corporation; and
 - (C) Simple interest on the [purchaser's cash equity at the rate of seven per cent a year.] original cost and capital improvements to the purchaser at the rate of one 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 ensure that all existing mortgages, liens, and encumbrances are fully paid.

In any purchase by transfer subject to an existing mortgage, the corporation shall agree to assume and to pay the 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 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 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)[.]; and
- (D) The corporation's share of appreciation in the dwelling unit as determined under rules adopted pursuant to chapter 91.

- (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)

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
- (3)] (2) The corporation determines, in accordance with rules adopted by the corporation, that the sale or transfer of a dwelling unit would be at a price and upon terms that preserve the intent of this section without the necessity of the State 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[.]; and provided further that the purchaser shall pay to the corporation its share of appreciation in the unit as determined in rules adopted pursuant to chapter 91.

(c) The corporation may release the restrictions prescribed in subsection (a) if 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.

[(c)] (d) 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 subsection (a)(1)(B) and (C).

[(d)] (e) 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)] (f) 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)] (g) Subsections (a), (b), (c), (d), [and] (e), and (f) 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 initial sale of market-priced units.”

SECTION 4. Section 201E-222, Hawaii Revised Statutes, is amended to read as follows:

“**§201E-222 Dwelling units; restrictions on use.** (a) A dwelling unit purchased under this chapter shall be occupied by the purchaser at all times.

(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).] 201E-221(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 initial sale of market-priced units.”

SECTION 5. Section 201E-2, Hawaii Revised Statutes, is amended by deleting the definition of “cash equity”.

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

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

(Approved April 29, 1991.)