

ACT 168

H.B. NO. 2361

A Bill for an Act Relating to Restrictive Covenants.

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

SECTION 1. Section 171-63, Hawaii Revised Statutes, is amended to read as follows:

**“§171-63 Waiver of restrictions.** (a) Use. Upon application by the owner and consent therefor having been given by each holder of record having a security interest, and after a finding that the public interest will be served thereby, the board of land and natural resources may amend or waive the conditions restricting the use of land contained in any agreement of sale, deed, or patent upon the condition that the grantee or patentee pay to the board the difference between the fair market value of the land based upon its restricted use and the fair market value with the restrictive condition amended or waived. [Except for residential lots, the] The foregoing authority granted to the board shall not be construed to authorize the board to waive the condition contained in any agreement of sale, deed, or patent which provides that upon change in use or breach of a condition, the title automatically reverts back<sup>1</sup> to the State, or the State shall have<sup>2</sup> power of termination.

(b) Residential lots. In case of a residential lot, the board [may], subject to the consent of each holder of record having a security interest, may waive strict adherence to the use thereof for residential purposes, if the owner or lessee desires to utilize part of the land for agricultural purposes together with the owner's or lessee's residence, provided that the agricultural use is not inconsistent or contrary to local applicable health or zoning ordinances[.] and upon the condition that the grantee or patentee pay to the board the difference between the fair market value of the land based upon its restricted use and the fair market

value with the restrictive condition amended or waived. The foregoing authority granted to the board shall not be construed to authorize the board to waive the condition contained in any agreement of sale, deed, or patent which provides that upon change in use or breach of a condition, the title automatically reverts back to the State, or the State shall have power of termination. Anything in this chapter to the contrary notwithstanding, in case of a residential lot sold in fee simple[, all]:

- (1) All restrictions relating to the use thereof shall expire ten years after the date of the issuance of the patent or deed by the State or fifteen years after the date of the sale by the State, whichever is sooner, provided that any change in use of the lot after the ten or fifteen years, as the case may be, shall be in accordance with applicable state and county [or city and county] zoning requirements[.]; and
- (2) Upon an application signed by all land owners in the subdivision, the board may waive any restrictive covenant upon the land, as long as the waiver shall not cause a violation of any state or county zoning requirements."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 12, 1992.)

#### Notes

1. Should be underscored.
2. Prior to amendment "the" appeared here.