

ACT 306

S.B. NO. 2858

A Bill for an Act Relating to Housing.

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

SECTION 1. Chapter 201E, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

“§201E- Homebuyers’ club program. (a) The corporation may establish a homebuyers’ club program for participants who are desirous of purchasing a home and who have adequate incomes but who lack sufficient funds for the downpayment and closing costs. The primary focus of this program is to facilitate the purchase of homes by providing participants with strategies to save money, to resolve credit problems, and to educate participants on how to shop for and purchase a home.

(b) In establishing such a program, the corporation shall adopt rules pursuant to chapter 91 relating to establishing a savings program for participants

based upon individual analyses of income and family expenses. The rules may also provide for integration of the homebuyers' club program with other governmental programs including but not limited to individual housing accounts under section 235-5.5, the state mortgage guarantee program under chapter 201E, subpart II.G., the downpayment loan program established under chapter 201E, subpart II.H., and the rent-to-own program established under section 201E-

(c) The corporation may secure the services of another public or private entity to carry out the purposes of this section.

§201E- Rent-to-own program. (a) The corporation may establish a rent-to-own program under which housing units that are for sale may be rented to program participants. Under this program, the corporation shall credit a portion of the rent received toward the purchase of the unit.

(b) The sales price shall be established at the beginning of the rental term and shall remain fixed for the first five years after the rental agreement is executed. During this period, the participant shall have the option of purchasing the unit at the designated sales price. If the participant does not elect to purchase the unit within the five-year period, the renter shall forfeit the right to continue living in the unit and the unit shall be made available to another purchaser or renter.

(c) The corporation shall have the right to re-establish the sales price upon expiration of the option period or upon resale of the unit.

(d) The corporation shall adopt rules pursuant to chapter 91 to carry out the purposes of this section."

SECTION 2. Chapter 201E, part II, subpart H, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§201E- Downpayment loan program revolving fund. There is created within the state treasury a revolving fund to be administered by the corporation and to be known as the downpayment loan revolving fund. The revolving fund shall be funded from the proceeds of general obligation bonds or other appropriations from the state legislature, and shall be used to carry out the purposes of this subpart."

SECTION 3. Section 201E-160, Hawaii Revised Statutes, is amended to read as follows:

"[§201E-160] State mortgage guarantee. (a) The corporation may guarantee:¹

- (1) Up to the top twenty-five per cent of the principal balance of real property mortgage loans for the purchase of qualified single-family or multifamily housing[; a] units;
- (2) A maximum of one hundred per cent of the principal balance of real property mortgage loans of qualified single-family housing under section 213 of the Hawaiian Homes Commission Act; [up]
- (3) Up to one hundred per cent of the principal balance of real property mortgage loans of single-family or multifamily housing developed under self-help or shell housing programs;

plus the interest due thereon, made to qualified borrowers by qualified private lenders; provided that at no time shall the corporation's liability, contingent or otherwise, on [such] these guarantees exceed \$10,000,000. For the purposes of

this section, the term “self-help housing program” means development or conservation of housing in which prospective homeowners have contributed labor, materials, or real property; provided that at least two-thirds of the participating homeowners are qualified by income for assistance under this subpart[;] and [provided further] that the program is carried out under the sponsorship of a nonprofit community organization. For the purposes of this section, the term “shell housing program” means development of housing which is habitable but unfinished and can be completed or expanded; provided that at least one hundred per cent of the participating homeowners are qualified by income for assistance under this chapter[;] and [provided further] that the program is carried out under the sponsorship of a public nonprofit or private organization.

(b) The loans shall be secured by a duly recorded first mortgage upon the fee simple or leasehold interest of the borrower in the single-family or multifamily dwelling owned and occupied by the borrower and the borrower’s permitted assigns. Private lenders shall include all banks, savings and loan associations, mortgage companies, and other qualified companies and trust funds whose business includes the making of loans in the [State.] state.

(c) Loans [secured] guaranteed under this section shall be [limited to qualified single-family and multifamily housing] in accordance with rules adopted by the corporation.

(d) To be eligible for loans under this section, a qualified borrower shall be:

- (1) A citizen of the United States or a resident alien;
- (2) A sound credit risk with ability to repay the money borrowed;
- (3) (2) Qualified under the rules adopted by the corporation; and
- (4) (3) Willing to comply with the rules as may be adopted by the director of finance.

The corporation [shall] may secure the services of a private lender to process all applications and determine who is a qualified borrower under this chapter.

(e) When the application for an insured loan has been approved by the corporation, the [director of finance] corporation shall issue to the lender a guarantee for that percentage of the loan on which it guarantees payment of principal and interest. The private lender shall collect all payments from the borrower and otherwise service the loan.

(f) In return for the corporation’s guarantee, the private lender shall remit out of [interest] monthly payments collected an insurance fee as [may be] established by the corporation. The funds remitted shall be placed in the state mortgage guarantee fund provided for in subsection (k).

(g) When any installment of principal and interest has been due for sixty days and has not been paid by the borrower, the private lender may file a claim for the guaranteed portion of the overdue payments with the [director of finance who] corporation which may then authorize vouchers for these payments, thereby acquiring a division of interest in the collateral pledged by the borrower in proportion to the amount of the payment. The [director of finance] corporation shall be reimbursed for any amounts so paid plus the applicable interest rate[, where] when payment is collected from the borrower.

(h) If there is any default in any payment to be made by the borrower, the lender shall notify the [director of finance] corporation within fifteen days. Should the lender deem that foreclosure proceedings are necessary to collect moneys due from the borrower, it shall so notify the [director of finance.] corporation. Within thirty days of either notification, the [director of finance] corporation may elect to request an assignment of the loan on payment in full to the

lender of the principal balance and interest due. Foreclosure proceedings shall be held in abeyance in the interim.

(i) Every qualified borrower who is granted a loan under this section shall comply with the following conditions:

- (1) Extend no portion of the qualified borrower's loan for purposes other than those sanctioned by the corporation;
- (2) Not sell or otherwise dispose of the [mortgage] mortgaged property except upon the prior written consent of the [director of finance,] corporation and except upon [such] any conditions [as] that may be prescribed in writing by the private lender;
- (3) Undertake to pay when due all taxes, liens, judgments, or assessments which may be lawfully assessed against the property mortgaged, together with cost and expense of any foreclosure of [such] the mortgage;
- (4) Keep insured to the satisfaction of the private lender all improvements and other insurable property covered by the mortgage. Insurance shall be made payable to the mortgagee as its interest may appear at the time of the loss. At the option of the private lender, subject to the [regulations] rules and standards of the corporation, sums so received may be used to pay for reconstruction of the improvements destroyed, or for decreasing the amount of the indebtedness;
- (5) Keep the improvements in good repair; and
- [(6)] All of the above conditions shall be held and construed to be a provision of any mortgage executed by virtue of this section whether appearing as a provision of the mortgage or not; and
- [(7)] (6) The private lender may impose [such] any other conditions in its mortgage[.]; provided the form of [such] the mortgage has received the prior approval of the corporation.

All of the above conditions shall be held and construed to be provisions of any mortgage executed by virtue of this section regardless of whether or not they are expressly incorporated in the mortgage document.

(j) Loans guaranteed and made under this subpart shall be repaid in accordance with a payment schedule specified by the private lender with payments applied first to interest and then to principal. Additional payments in any sums[,], and the payment of the entire principal, may be made at any time within the² period of the loan. The private lender [may] for satisfactory cause and at its discretion, may extend the time within which the installments of principal may be made for a period not to exceed two years.

(k) There is created a special fund to be known as the "state mortgage guarantee fund". All interest and fees collected under this subpart by the [director of finance and the] corporation shall be deposited into this fund. The purpose of the fund is to guarantee payment of loans made under this subpart and to carry on the operations of [the director of finance and] the corporation in administering and granting loans under this subpart. [All disbursements from the state mortgage guarantee fund shall be paid out on vouchers approved by the director of finance and warrants signed by the comptroller.]"

SECTION 4. Section 201E-170, Hawaii Revised Statutes, is amended to read as follows:

"[§201E-170] Downpayment loans. (a) The corporation may make direct downpayment loans to [qualified] eligible borrowers. The downpayment

loan to any borrower shall not exceed thirty per cent of the purchase price of the residential property or \$15,000, whichever is less. The interest rate on the loans may range from zero per cent to eight per cent, depending on the buyer's incomes.

(b) The repayment of every downpayment loan shall be secured by a duly recorded second mortgage executed by the borrower to the State on the residential property purchased with the downpayment loan.

(c) The principal of the downpayment loan, together with accrued interest, shall be due and payable upon the sale, transfer, or refinancing of the home, or shall be repaid by the borrower in such installments as determined by the corporation [over a period not exceeding forty years.]; provided that the corporation may provide a period in which the payment could be waived. The period over which the principal and interest shall be paid need not coincide with the period over which the loan from the mortgage lender for the balance of the purchase price must be repaid. The borrower may repay the whole or any part of the unpaid balance of the downpayment loan, plus accrued interest at any time without penalty.

(d) The corporation may secure the services of the mortgage lender who loans to the borrower the balance of the purchase price of the residential property or the services of any other mortgage lender doing business in the State to collect, [in] on behalf of the State, the principal and interest of the downpayment loan and otherwise to service the downpayment loan, for a servicing fee not in excess of [then prevalent] the prevailing loan servicing fees. [For this purpose, the corporation may assign the second mortgage held by it to secure the repayment of the downpayment loan to such mortgage lender.]

(e) The corporation shall adopt rules pursuant to chapter 91 to carry out the purposes of this subpart."

SECTION 5. Section 201E-171, Hawaii Revised Statutes, is amended to read as follows:

"[~~§~~201E-171] Qualifications for downpayment loan. (a) No person shall be qualified for a downpayment loan unless the person:

- (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 the State [of one year or more];
- (4) [Has a bona fide intent to] Will physically reside in the residential property to be purchased[;] for the term of the loan;
- (5) Is accepted by a mortgage lender as a person to whom it is willing to lend money for the purchase of the residential property provided the required downpayment is made; and
- (6) [Has the financial capacity to repay the downpayment loan.] Provides a portion of the downpayment which shall be equal to at least three per cent of the sales price.

(b) No person who owns in fee simple or in leasehold any other residential property within the State[,] shall be eligible to become a borrower under this section. A person shall be deemed to own a residential property if the person, the person's spouse, or both [the person and person's spouse] (unless separated and living apart under a decree of a court of competent jurisdiction) own [such] a majority interest in a residential property."

SECTION 6. Section 201E-172, Hawaii Revised Statutes, is amended to read as follows:

“[§201E-172] Restrictions on borrower. Every loan made under this subpart shall be subject to the following conditions:

- (1) The borrower shall expend no portion of the borrower's downpayment loan for purposes other than to make a downpayment for the purchase of a residential property[.];
- (2) The residential property purchased with the downpayment loan and mortgaged to the State to secure the repayment of the loan shall not be sold or assigned without the prior approval in writing of the corporation and the first mortgage lender[.];
- (3) The borrower shall pay when due all taxes, liens, judgements, or assessments which may be lawfully levied against the residential property and all costs and expenses of any foreclosure of the mortgage made to the State[.];
- (4) The borrower shall maintain fire and casualty insurance in [such] amounts equal to the replacement value of all improvements and insurable portions of the residential property with an insurance company authorized to do business in the State. All proceeds of [such] that insurance shall be made payable to the first mortgage lender and the corporation as their respective interests may appear at the time of any loss or damage. Subject to the rules of the corporation, in the event of any loss or damage to the improvements or property covered by [such] the insurance, the proceeds receivable by the State shall be applied toward the reconstruction of the improvements or property destroyed or damaged, unless otherwise determined by the corporation on behalf of the State[.]; and
- (5) The borrower shall maintain the improvements in good repair.

All of the above conditions shall be [deemed] held and construed to be a part of any downpayment mortgage executed under this part, regardless of whether or not they are expressly incorporated in the mortgage document.”

SECTION 7. Section 201E-173, Hawaii Revised Statutes, is amended to read as follows:

“[§201E-173] Default. If the borrower defaults in the payment of any installment of principal or interest of the downpayment loan, the corporation or mortgage lender shall take all necessary action to collect the delinquent amounts and may[, on behalf of the State,] take all actions generally allowed holders of mortgages, including the power to foreclose. Upon any foreclosure of the second mortgage, the corporation or mortgage lender on behalf of the [State,] corporation, may purchase the interest of the borrower in and to the residential property, take possession thereof and assume all of the obligations of the borrower under the first mortgage held by the private lender and [such] any other liens having priority over the second mortgage [as] that may then exist. On [such] the acquisition of the borrower's interest, the corporation, at its option, may pay in full the unpaid balance of the borrower's obligation secured by the first mortgage and other prior liens, repair, renovate, modernize, or improve the residential property, and, with or without clearing the property of all prior mortgages and liens, sell, lease, or rent the property or use or dispose of the same in any manner that the corporation is authorized [to do so] by law.”

SECTION 8. Section 201E-217, Hawaii Revised Statutes, is amended to read as follows:

“§201E-217 Hawaii development revolving fund. (a) There shall be a revolving fund to be known as the Hawaii development revolving fund which shall be administered by the corporation. All repayments of principal and interest on loans or grants made by the corporation from the fund shall be placed in the Hawaii development revolving fund to be used for the purposes of this section.

(b) The corporation may make loans[,], or grants, either before or after final subdivision approval, to cover planning, [development,] engineering, feasibility studies, and other initial costs, including the cost of options, agreements of sale, and downpayments[,], of commencing projects to provide low or moderate cost housing through government assistance programs.

(c) In managing the fund, the corporation may cooperate with other public and private nonprofit organizations and may enter into loan or grant agreements with them. The necessity for the extent and nature of security required for a loan or grant shall be determined by the corporation. The security may include, but is not limited to, a borrowing resolution of the nonprofit organization.

The foregoing powers are subject, however, to the following restrictions and limitations:

- (1) No single loan or grant shall exceed two per cent of the project cost;
- (2) The loan shall be repaid with simple interest [in the amount of] not to exceed six per cent per year; and
- (3) The moneys loaned shall be used only for the planning, [development,] engineering, feasibility studies, and other initial costs of commencing projects to provide nonprofit low or moderate cost housing.

(d) The corporation may adopt rules in accordance with chapter 91 to carry out the purposes of this section.

(e) For the purposes of this section, “government assistance programs” means housing programs qualified by the corporation and administered or operated by the corporation or the United States or any of their political subdivisions, agencies, or instrumentalities, corporate or otherwise.”

SECTION 9. Statutory material to be repealed is bracketed. New statutory material is underscored.³

SECTION 10. This Act shall take effect upon its approval.

(Approved June 30, 1992.)

Notes

1. Colon should be underscored.
2. Prior to amendment “time” appeared here.
3. Edited pursuant to HRS §23G-16.5.