

ACT 51

H.B. NO. 3096

A Bill for an Act Relating to Housing.

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 shall physically reside in the dwelling unit purchased or rented under this chapter;
- (4) In the case of purchase of [a dwelling unit] real property in fee simple or leasehold, has a gross income sufficient to qualify for the loan to finance the purchase; [and] or in the case of a rental, demonstrates an ability to pay rent as determined by the corporation and meets any additional criteria established by the corporation for the respective rental housing development for which the applicant is applying; and
- (5) [Either oneself or together with spouse does not own a majority interest in fee simple or leasehold lands suitable for dwelling purposes or a majority interest in lands under any trust agreement or other fiduciary arrangement in which another person holds the legal title to such land, and whose spouse does not own a majority interest in fee simple or leasehold lands suitable for dwelling purposes or a majority interest in lands under any trust agreement or other fiduciary arrangement in which another person holds the legal title to such land, 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;] Meets the following qualifications:
 - (A) Is a person who either oneself or together with spouse, does not own a majority interest in fee simple or leasehold lands suitable for dwelling purposes, or a majority interest in lands under any trust agreement or other fiduciary arrangement in which another person holds the legal title to such land; and
 - (B) Is a person whose spouse does not own a majority interest in fee simple or leasehold lands suitable for dwelling purposes or a majority interest in lands under any trust agreement or other fiduciary arrangement in which another person holds the legal title to such land, 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 and shall physically reside in the dwelling unit purchased; is at least eighteen years of age; and meets other qualifications as determined by the developer.”

SECTION 2. Section 201E-221, Hawaii Revised Statutes, is amended to read as follows:

“§201E-221 [Dwelling units;] Real property; restrictions on transfer[,]; waiver of restrictions. (a) The following restrictions shall apply to the transfer of [dwelling units] real property developed and sold under this chapter, whether [on] in 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]¹ real property [or the lease], the corporation shall have the first option to purchase the [unit and] real 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 original cost and capital improvements to the purchaser at the rate of one per cent a year.

The corporation may purchase the [unit] real property 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 and² 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] real property 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] real property 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,] real property, and any other amount expended by the corporation not counted as cost under section 201E-220 but charged to the [dwelling unit] real property by good accounting practice as determined by the corporation whose books shall be prima facie evidence of the correctness of the costs;
 - (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;] real property; 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] real property 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] real property as determined under rules adopted pursuant to chapter 91[.] when applicable.³

(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 and¹] real 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 [corporation determines, in accordance with rules adopted by the corporation, that the] sale or transfer of [a dwelling unit] the real property would be at a price and upon terms that preserve the intent of this section without the necessity of the State repurchasing the [unit;] real property; provided that, in this case, the purchaser shall sell the unit or lot 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[.] when applicable.³

(c) The corporation may release the restrictions prescribed in subsection (a) if the [dwelling unit] real property 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.

(d) The restrictions prescribed in [subsection (a)] sections 201E-221 to 201E-224 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] real property pursuant to a mortgage foreclosure, foreclosure under power of sale, or a conveyance in lieu of foreclosure after a foreclosure action is commenced[.]; or when a mortgage is assigned to a federal housing agency. Any law to the contrary notwithstanding, a mortgagee under a mortgage covering [a dwelling unit and land] real property 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 in writing 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[.]; provided that the mortgagee's failure to provide such written notice to the corporation shall not affect such holder's rights under the mortgage. 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).

(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] real property 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.

(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.

(g) (f) Subsections (a), (b), (c), (d), (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.

(g) The corporation is authorized to waive any of the restrictions set forth in this section in order to comply with or conform to requirements set forth in federal laws or regulations governing mortgage insurance or guarantee programs or requirements set forth by federally chartered secondary mortgage market participants."

SECTION 3.⁴ Section 201E-222, Hawaii Revised Statutes, is amended to read as follows:

"§201E-222 [Dwelling units;] Real property; restrictions on use. (a) [A dwelling unit] Real property purchased 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] terminate and shall not attach in subsequent transfers of title [as prescribed in section 201E-221(c).] if the corporation releases the restrictions when the real property is financed under a federally subsidized mortgage program.

(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.

(f) The corporation shall be authorized to waive any of the restrictions set forth in this section in order to comply with or conform to requirements set forth in federal laws or regulations governing mortgage insurance or guarantee programs or requirements set forth by federally chartered secondary mortgage market participants."

SECTION 4.⁴ Section 201E-223, Hawaii Revised Statutes, is amended to read as follows:

“[§201E-223] Restrictions on use, sale, and transfer of [dwelling units;] real property; effect of amendment or repeal. (a) Restrictions on the use, sale, and transfer of [dwelling units] real property shall be made as uniform as possible in application to purchasers of all [units,] real property, and restrictions shall be conformed with agreement of the purchaser to reflect change or repeal made by any subsequent legislative act, ordinance, rule, or regulation. [Dwelling unit purchasers] Purchasers shall be permitted at their election to sell or transfer [units] real property subject to restrictions in effect at the time of their sale or transfer.

(b) The corporation, any [other] department of the State, or any county housing agency maintaining restrictions, through contract, deed, other instrument, or by rule, shall notify purchasers of any substantial change in restrictions made by law, ordinance, rule, or regulation not more than one hundred eighty days after a change in restrictions, and such notice shall clearly state the enacted or proposed new provisions, the date or dates upon which they are to be effective, and offer to each purchaser of [dwelling units] real property constructed and sold prior to such effective date an opportunity to modify the existing contract or other instrument to incorporate the most recent provisions. The notice shall be published at least three times in a newspaper of general circulation in the State for state agencies and at least three times in a county newspaper for county agencies.

(c) [Where] For all purchasers of real property prior to June 25, 1990, where the restrictions on use and transfer of property apply for a period of time, the period of time shall not be increased beyond the date calculated from the date of original purchase.

(d) No [dwelling unit] purchaser shall be entitled to modify the restrictions on use, transfer, or sale of the [dwelling unit,] real property, without the written permission of the holder of a duly-recorded first mortgage on the dwelling unit and the owner of the fee simple or leasehold interest in the land underlying the unit, unless the holder of the first mortgage or the owner is an agency of the State or its political subdivisions.

(e) This section shall apply to all [dwelling units] real property developed, constructed, and sold pursuant to this chapter and similar programs in the State or its political subdivisions and which are sold on the condition that the purchaser accepts restrictions on the use, sale, or transfer of interest in the [dwelling unit] real property purchased.

(f) The provisions of this section shall be incorporated in any deed, lease, instrument, rule, or regulation relating to restrictions on use, sale, or transfer of dwelling units, entered into after June 20, 1977.

(g) The restrictions of this section shall terminate as to a particular real property and shall not attach in subsequent transfers of title of that real property if the corporation releases the restrictions when the real property is financed under a federally subsidized mortgage program.”

SECTION 5.⁴ Section 201E-224, Hawaii Revised Statutes, is amended to read as follows:

“§201E-224 Corporation’s right to repurchase or rent [unit;] real property; authority to seek recovery. (a) Notwithstanding any provisions to the contrary, during the period in which the restrictions in [sections] section 201E-221 [and 201E-222] are in effect, the following provisions shall apply when dwelling units developed, constructed, financed, purchased, or sold pursuant to Act 105, Session Laws of Hawaii 1970, as amended, are found to have a substantial construction defect[:], or when vacant lands developed, financed, purchased,

or sold pursuant to Act 105, Session Laws of Hawaii 1970, as amended, are found to have a substantial soil defect:

- (1) The corporation shall have the right, but not the obligation, to repurchase a dwelling unit or land which has a [construction] defect, regardless [of] whether or not the owner wishes to sell[.]; provided that such repurchases shall be in accordance with the following provisions:
 - (A) The corporation may repurchase a dwelling unit or land if:
 - (i) The dwelling unit or land is deemed unsafe by the county building department; or
 - (ii) The defects are irreparable; or
 - (iii) In the opinion of the corporation, the defect is of such magnitude that it will take longer than a year to repair.
 - (B) The corporation's purchase price shall be based on the formula set forth in section 201E-221(a)(1);
 - (C) After repairs to the unit or land are completed, the former owner shall have the first right of refusal to repurchase the [unit;] real property;
 - (D) The corporation shall give preference in all other projects of the corporation to all owners whose [units are] real property is repurchased by the corporation under this subsection, and the corporation may waive certain eligibility requirements for these owners; and
 - (E) If the corporation exercises its right to purchase [a] defective [unit] real property against an owner's wishes pursuant to this paragraph, the corporation shall provide relocation assistance to that owner as provided in chapter 111;
- (2) If the corporation does not opt to purchase [a dwelling unit which has a construction defect,] defective real property, the corporation shall also have the right, but not the obligation, to enter into a contract to repair a dwelling unit which has a construction defect[.] or land which has a soil defect. During the period that the [unit] real property is being repaired, the corporation shall rent that [unit] real property from the owner for an amount not to exceed the owner's present mortgage payments; and
- (3) If the corporation does not execute either a contract to repurchase the [dwelling unit] real property or an agreement to repair and rent the [unit] real property within ninety days after written notice is given to the corporation of a construction defect, the owner may pursue any other available legal remedies.

For the purposes of this subsection, "substantial construction defect" includes but is not necessarily limited to: structural defects such as shifting foundations and bearing walls; structural deficiencies due to the use of defective or undersized materials; and defects affecting the health and safety of occupants[.]; and "substantial soil defect" means shifting, sliding, or sinking ground of such degree as to affect the dwelling unit on the land or the health and safety of the occupants of the land.

(b) If moneys are expended by the corporation pursuant to [paragraphs] subsections (a)(1) and [(a)(2),] (2), the corporation shall have the authority to take necessary legal action against the developer, codeveloper, general contractor, and their subcontractors, consultants, and other parties notwithstanding any provisions to the contrary in chapter 657.

(c) If [dwelling units] real property developed, constructed, financed,

purchased, or sold pursuant to Act 105, Session Laws of Hawaii 1970, as amended, are found to have a substantial construction or soil defect, the corporation shall have the right, but not the obligation, to file or cause to be filed a legal action on behalf of or by, the owner or lessee of the [dwelling unit] real property for the recovery of damages or for injunctive relief against the developer, codeveloper, general contractor, and their subcontractors, consultants, and other parties notwithstanding any provisions to the contrary in chapter 657. Additionally, notwithstanding any provision of rule 23 of the Hawaii rules of civil procedure, the corporation may file or cause to be filed a legal action brought under this subsection as a class action on behalf of or by at least two owners or lessees of [dwelling units] real property which have similar substantial construction or soil defects.

(d) Nothing in this chapter shall be construed so as to diminish the rights or remedies of the corporation otherwise provided under common law, by statute or by contract.

(e) The corporation shall adopt rules pursuant to chapter 91 necessary for the purposes of this section.

(f) The provisions of this section shall not apply to a particular real property and shall not apply after subsequent transfers of title of that real property if the corporation releases the restrictions when the real property is financed under a federally subsidized mortgage program.

[(f)] (g) If any subsection, sentence, clause, or phrase of this section, or its application to any person or transaction or other circumstances, is for any reason held to be unconstitutional or invalid, the remaining subsections, sentences, clauses, and phrases of this section, or the application of this section to other persons or transactions or circumstances, shall not be affected. The legislature hereby declares that it would have passed this section and each subsection, clause, or phrase thereof, irrespective of the fact that any one or more subsections, sentences, clauses, or phrases of this section, or its application to any person or transaction or other circumstance, be declared unconstitutional or invalid."

SECTION 6.⁴ Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 7.⁴ This Act shall take effect upon its approval.

(Approved April 29, 1992.)

Notes

1. Prior to amendment "the" appeared here.
2. Prior to amendment "to" appeared here.
3. Period should be underscored.
4. Section designations renumbered.