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S.B. NO. 862

A Bill for an Act Relating to Housing.

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

SECTION 1. The purpose of this Act is to facilitate the collection of the shared appreciation equity lien, deferred sales price lien, and excess proceeds in lieu of any buyback, imposed by the State on the sale of affordable housing properties that received assistance from the Hawaii housing finance and development corporation, which are undergoing foreclosure.

SECTION 2. Section 201H-47, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) The following restrictions shall apply to the transfer of real property developed and sold under this chapter, whether in fee simple or leasehold:

- (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 real property, the corporation shall have the first option to purchase the real property at a price that 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;
- (2) The corporation may purchase the real property either:
 - (A) By conveyance free and clear of all mortgages and liens; or
 - (B) By conveyance subject to existing mortgages and liens.

If the real property is conveyed in the manner provided in subparagraph (A), it shall be conveyed to the corporation only after all mortgages and liens are released. If the real property is conveyed in the manner provided in subparagraph (B), the corporation shall acquire the property subject to any first mortgage created for the purpose of securing the payment of a loan of funds expended solely for the purchase of the real property by the seller; and any mortgage or lien created for any other purpose provided that the corporation has previously consented to it in writing.

The corporation's interest created by this ~~paragraph~~ section shall constitute a statutory lien on the real property and shall be superior to any other mortgage or lien except for:

- (i) Any first mortgage created for the purpose of securing the payment of a loan of funds expended solely for the purchase of the real property by the seller;
- (ii) Any mortgage insured or held by a federal housing agency; and
- (iii) Any mortgage or lien created for any other purpose; provided that the corporation has previously consented to it in writing.

The amount paid by the corporation to the seller shall be the difference, if any, between the purchase price determined by paragraph (1)(A) to (C), and the total of the outstanding principal balances of the mortgages and liens assumed by the corporation;

- (3) A purchaser may refinance real property developed and sold under this chapter; provided that the purchaser shall not refinance the real property within ten years from the date of purchase for an amount in excess of the purchase price as determined by paragraph (1)(A) to (C); provided further that the purchaser shall obtain the corporation's written consent if any restriction on the transfer of the real property remains applicable;
- (4) After the end of the tenth year from the date of initial purchase or execution of an agreement of sale, the purchaser may sell the real property and sell or assign the property 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 real property, and any other amount expended by the corporation not counted as costs under section 201H-45 but charged to the 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 real property. 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 real property at a price that shall not exceed the sum as computed under paragraphs (1) and (2); and
- (D) The corporation's share of appreciation in the real property as determined under rules adopted pursuant to chapter 91, when applicable; ~~and~~
- (5) Notwithstanding any provision ~~[above]~~ in this section to the contrary, pursuant to rules adopted by the corporation, the subsidy or deferred sales price described in paragraph (4)(B) and any interest accrued pursuant to paragraph (4)(C) may be paid, in part or in full, at any time~~[-]; and~~
- (6) Notwithstanding any provision in this section to the contrary, the corporation's share of appreciation in the real property described in paragraph (4)(D):
- (A) Shall apply when the sales price of the real property that is developed and sold under this chapter is less than the then-current, unencumbered, fair market value of the real property as determined by a real property appraisal obtained prior to the closing of the sale;
- (B) Shall be a restriction that runs with the land until it is paid in full and released by the corporation, or extinguished pursuant to subsection (e); and

(C) May be paid, in part or in full, at any time after recordation of the sale.”

2. By amending subsection (c) to read:

“(c) The corporation may waive the restrictions prescribed in subsection (a) or (b) if:

- (1) The purchaser wishes to transfer title to the real property by devise or through the laws of descent to a family member who would otherwise qualify under rules established by the corporation;
- (2) The sale or transfer of 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 real property; provided that, in this case, the purchaser shall sell the ~~[unit or lot]~~ real property and sell or assign the real property to a person who is a “qualified resident” as defined in section 201H-32; and provided further that the purchaser shall pay to the corporation its share of appreciation in the ~~[unit]~~ real property as determined in rules adopted pursuant to chapter 91, when applicable; or
- (3) The sale or transfer is of real property subject to a sustainable affordable lease as defined in section 516-1.”

3. By amending subsections (e) and (f) to read:

“(e) The restrictions prescribed in this section and sections 201H-49 to 201H-51 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 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; provided that the mortgage is the initial purchase money mortgage, or that the corporation consented to and agreed to subordinate the restrictions to the mortgage when originated, if the mortgage is not the initial purchase money mortgage; or when a mortgage is assigned to a federal housing agency. Any law to the contrary notwithstanding, a mortgagee under a mortgage covering 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[;] forty-five days prior to commencing mortgage foreclosure proceedings;

provided that the mortgagee’s failure to provide written notice to the corporation shall not affect the mortgage holder’s rights under the mortgage. The corporation shall be a party to any foreclosure action, and shall be entitled to its share of appreciation in the real property as determined under this chapter in lien priority when the payment is applicable, and if foreclosure occurs within the ten-year period after the purchase, the corporation shall also 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]~~ that shall not exceed the sum of amounts determined pursuant to subsection (a)(1)(B) and (C).

(f) The provisions of this section shall be incorporated in any deed, lease, agreement of sale, or any other instrument of conveyance issued by the corporation. In any sale by the corporation of 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)(4)(B), a description of the cost

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items that 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. In any sale in which the corporation's share of appreciation in real property is a restriction, the terms of the shared appreciation equity program shall be clearly stated and included as an exhibit in any deed, lease, agreement of sale, or any other instrument of conveyance."

SECTION 3. Section 201H-50, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Restrictions on the use, sale, and transfer of real property shall be made as uniform as possible in application to purchasers of all 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. Purchasers shall be permitted at their election to sell or transfer real property subject to restrictions in effect at the time of their sale or ~~transfer~~; provided that the corporation is paid its share of appreciation in the real property as determined by rules adopted pursuant to chapter 91, as applicable."

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved April 30, 2009.)