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## A BILL FOR AN ACT

RELATING TO HOUSING.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The purpose of this Act is to address  
2 affordable housing. More specifically, this Act provides that  
3 the restriction on the resale of an affordable housing unit  
4 shall apply in perpetuity.

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

7           "**§201H-47 Real property; restrictions on transfer; waiver**  
8 **of restrictions.** (a) The following restrictions shall apply to  
9 the transfer of real property developed and sold under this  
10 chapter, whether in fee simple or leasehold:

11           (1) [~~For a period of ten years after~~] After the purchase,  
12 whether by lease, assignment of lease, deed, or  
13 agreement of sale, if the purchaser wishes to transfer  
14 title to the real property, the [~~corporation shall~~  
15 ~~have the first option to purchase~~] purchaser shall  
16 transfer the real property to a qualified resident, as  
17 defined in section 201H-32, at a price that shall not  
18 exceed the sum of:



- 1 (A) The original cost to the purchaser, as defined in
- 2 rules adopted by the corporation;
- 3 (B) The cost of any improvements added by the
- 4 purchaser, as defined in rules adopted by the
- 5 corporation; and
- 6 (C) Simple interest on the original cost and capital
- 7 improvements to the purchaser at the rate of one
- 8 per cent a year[+].

9 The corporation shall provide that the transfer of the  
10 real property to the "qualified resident" is upon  
11 terms that preserve the intent of this section and  
12 sections 201H-49 and 201H-50 and in accordance with  
13 rules adopted by the corporation.

- 14 (2) [~~The~~] If the purchaser cannot transfer the real  
15 property within one year of listing it for transfer,  
16 the corporation may purchase the real property either:  
17 (A) By conveyance free and clear of all mortgages and  
18 liens; or  
19 (B) By conveyance subject to existing mortgages and  
20 liens.

21 If the real property is conveyed in the manner  
22 provided in subparagraph (A), it shall be conveyed to



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

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

15           (i) Any first mortgage created for the purpose  
16           of securing the payment of a loan of funds  
17           expended solely for the purchase of the real  
18           property by the seller;

19           (ii) Any mortgage insured or held by a federal  
20           housing agency; and



1 (iii) Any mortgage or lien created for any other  
2 purpose; provided that the corporation has  
3 previously consented to it in writing.

4 The amount paid by the corporation to the seller shall  
5 be the difference, if any, between the purchase price  
6 determined by paragraph (1) (A) to (C), and the total  
7 of the outstanding principal balances of the mortgages  
8 and liens assumed by the corporation[+].

9 [+3] (b) A purchaser may refinance real property  
10 developed and sold under this chapter; provided that the  
11 purchaser shall not refinance the real property within ten years  
12 from the date of purchase for an amount in excess of the  
13 purchase price as determined by paragraph (1) (A) to (C) [+.

14 ~~(4) After the end of the tenth year from the date of~~  
15 ~~purchase or execution of an agreement of sale, the~~  
16 ~~purchaser may sell the real property and sell or~~  
17 ~~assign the property free from any price restrictions;~~  
18 ~~provided that the purchaser shall be required to pay~~  
19 ~~to the corporation the sum of:~~

20 ~~(A) The balance of any mortgage note, agreement of~~  
21 ~~sale, or other amount owing to the corporation;~~



1           ~~(B) Any subsidy or deferred sales price made by the~~  
2           ~~corporation in the acquisition, development,~~  
3           ~~construction, and sale of the real property, and~~  
4           ~~any other amount expended by the corporation not~~  
5           ~~counted as costs under section 201H-45 but~~  
6           ~~charged to the real property by good accounting~~  
7           ~~practice as determined by the corporation whose~~  
8           ~~books shall be prima facie evidence of the~~  
9           ~~correctness of the costs;~~

10          ~~(C) Interest on the subsidy or deferred sales price,~~  
11          ~~if applicable, and any other amount expended at~~  
12          ~~the rate of seven per cent a year computed as to~~  
13          ~~the subsidy or deferred sales price, if~~  
14          ~~applicable, from the date of purchase or~~  
15          ~~execution of the agreement of sale, and as to any~~  
16          ~~amount expended, from the date of expenditure,~~  
17          ~~provided that the computed interest shall not~~  
18          ~~extend beyond thirty years from the date of~~  
19          ~~purchase or execution of the agreement of sale of~~  
20          ~~the real property. If any proposed sale or~~  
21          ~~transfer will not generate an amount sufficient~~  
22          ~~to pay the corporation the sum as computed under~~



1           ~~this paragraph, the corporation shall have the~~  
2           ~~first option to purchase the real property at a~~  
3           ~~price that shall not exceed the sum as computed~~  
4           ~~under paragraphs (1) and (2); and~~

5           ~~(D) The corporation's share of appreciation in the~~  
6           ~~real property as determined under rules adopted~~  
7           ~~pursuant to chapter 91, when applicable; and~~

8           ~~(5) Notwithstanding any provision above to the contrary,~~  
9           ~~pursuant to rules adopted by the corporation, the~~  
10           ~~subsidy or deferred sales price described in paragraph~~  
11           ~~(4) (B) and any interest accrued pursuant to paragraph~~  
12           ~~(4) (C) may be paid, in part or in full, at any time.~~

13           ~~(b) For a period of ten years after the purchase, whether~~  
14           ~~by lease, assignment of lease, deed, or agreement of sale, if~~  
15           ~~the purchaser wishes to transfer title to the real property, and~~  
16           ~~if the corporation does not exercise the option to purchase the~~  
17           ~~real property as provided in subsection (a), then the~~  
18           ~~corporation shall require the purchaser to sell the real~~  
19           ~~property to a "qualified resident" as defined in section~~  
20           ~~201H 32, and upon the terms that preserve the intent of this~~  
21           ~~section and sections 201H 49 and 201H 50, and in accordance with~~  
22           ~~rules adopted by the corporation].~~



1 (c) The corporation may waive the restrictions prescribed  
2 in subsection (a) [~~or (b)~~] if [+

3 ~~(1) The] the purchaser wishes to transfer title to the~~  
4 ~~real property by devise or through the laws of descent~~  
5 ~~to a family member who would otherwise qualify under~~  
6 ~~rules established by the corporation[+]~~

7 ~~(2) The sale or transfer of the real property would be at~~  
8 ~~a price and upon terms that preserve the intent of~~  
9 ~~this section without the necessity of the State~~  
10 ~~repurchasing the real property; provided that, in this~~  
11 ~~case, the purchaser shall sell the unit or lot and~~  
12 ~~sell or assign the property to a person who is a~~  
13 ~~"qualified resident" as defined in section 201H-32;~~  
14 ~~and provided further that the purchaser shall pay to~~  
15 ~~the corporation its share of appreciation in the unit~~  
16 ~~as determined in rules adopted pursuant to chapter 91,~~  
17 ~~when applicable; or~~

18 ~~(3) The sale or transfer is of real property subject to a~~  
19 ~~sustainable affordable lease as defined in section~~  
20 ~~516-1].~~

21 (d) The corporation may release the restrictions  
22 prescribed in subsection (a) [~~or (b)~~] if the real property is



1 financed under a federally subsidized mortgage program and the  
2 restrictions would jeopardize the federal government's ability  
3 to recapture any interest credit subsidies provided to the  
4 homeowner.

5 (e) The restrictions prescribed in this section and  
6 sections 201H-49 to 201H-51 shall not be [automatically]  
7 extinguished and shall [~~not~~] attach in subsequent transfers of  
8 title when a mortgage holder or other party becomes the owner of  
9 the real property pursuant to a mortgage foreclosure,  
10 foreclosure under power of sale, or a conveyance in lieu of  
11 foreclosure after a foreclosure action is commenced[+] or when a  
12 mortgage is assigned to a federal housing agency. Any law to  
13 the contrary notwithstanding, a mortgagee under a mortgage  
14 covering real property or leasehold interest encumbered by the  
15 first option to purchase in favor of the corporation, prior to  
16 commencing mortgage foreclosure proceedings, shall notify the  
17 corporation in writing of:

- 18 (1) Any default of the mortgagor under the mortgage within  
19 ninety days after the occurrence of the default; and  
20 (2) Any intention of the mortgagee to foreclose the  
21 mortgage under chapter 667;





1 provided that the mortgagee's failure to provide written notice  
2 to the corporation shall not affect the mortgage holder's rights  
3 under the mortgage. The corporation shall be a party to any  
4 foreclosure action, and shall be entitled to all proceeds  
5 remaining in excess of all customary and actual costs and  
6 expenses of transfer pursuant to default, including liens and  
7 encumbrances of record; provided that the person in default  
8 shall be entitled to an amount [~~which~~] that shall not exceed the  
9 sum of amounts determined pursuant to subsection (a)(1)(B) and  
10 (C).

11 (f) The provisions of this section shall be incorporated  
12 in any deed, lease, agreement of sale, or any other instrument  
13 of conveyance issued by the corporation. [~~In any sale by the  
14 corporation of real property for which a subsidy or deferred  
15 sales price was made by the corporation, the amount of the  
16 subsidy or deferred sales price described in subsection  
17 (a)(4)(B), a description of the cost items that constitute the  
18 subsidy or deferred sales price, and the conditions of the  
19 subsidy or deferred sales price shall be clearly stated at the  
20 beginning of the contract document issued by the corporation.]~~

21 (g) This section need not apply to market-priced units in  
22 an economically integrated housing project, except as otherwise



1 determined by the developer of the units; provided that  
2 preference shall be given to qualified residents in the initial  
3 sale of market-priced units.

4 (h) The corporation is authorized to waive any of the  
5 restrictions set forth in this section in order to comply with  
6 or conform to requirements set forth in federal law or  
7 regulations governing mortgage insurance or guarantee programs  
8 or requirements set forth by federally chartered secondary  
9 mortgage market participants."

10 SECTION 3. Section 201H-48, Hawaii Revised Statutes, is  
11 amended to read as follows:

12 "[+] §201H-48 [+] **Exception of current owners in corporation**  
13 **projects.** The corporation may allow a person who is a current  
14 owner of a dwelling unit in a multifamily housing project  
15 sponsored by the corporation to apply for the purchase of a  
16 larger dwelling unit in a project sponsored by the corporation  
17 if the applicant's current family size exceeds the permissible  
18 family size for the applicant's current dwelling unit, as  
19 determined by prevailing county building or housing codes. The  
20 applicant shall be required to first sell the applicant's  
21 current dwelling unit [~~back~~] to [~~the corporation.~~]  
22 ~~Notwithstanding any law to the contrary, any applicant, as it~~



1 ~~pertains to for sale housing, shall be] a "qualified resident"~~

2 ~~[who:~~

3 ~~(1) Is a citizen of the United States or a resident alien;~~

4 ~~(2) Is at least eighteen years of age;~~

5 ~~(3) Is domiciled in the State and shall physically reside~~

6 ~~in the dwelling unit purchased under this section;~~

7 ~~(4) In the case of purchase of real property in fee simple~~

8 ~~or leasehold, has a gross income sufficient to qualify~~

9 ~~for the loan to finance the purchase; and~~

10 ~~(5) Except for the applicant's current residence, meets~~

11 ~~the following qualifications:~~

12 ~~(A) Is a person who either oneself or together with~~

13 ~~the person's spouse or a household member, does~~

14 ~~not own a majority interest in fee simple or~~

15 ~~leasehold lands suitable for dwelling purposes,~~

16 ~~or a majority interest in lands under any trust~~

17 ~~agreement or other fiduciary arrangement in which~~

18 ~~another person holds the legal title to the land;~~

19 ~~and~~

20 ~~(B) Is a person whose spouse or a household member~~

21 ~~does not own a majority interest in fee simple or~~

22 ~~leasehold lands suitable for dwelling purposes,~~



1           ~~or a majority interest in lands under any trust~~  
2           ~~agreement or other fiduciary arrangement in which~~  
3           ~~another person holds the legal title to the land,~~  
4           ~~except when husband and wife are living apart~~  
5           ~~under a decree of separation from bed and board~~  
6           ~~issued by the family court pursuant to section~~  
7           ~~580-71.], as defined in section 201H-32."~~

8           SECTION 4. Section 201H-49, Hawaii Revised Statutes, is  
9 amended by amending subsections (a) and (b) to read as follows:

10           "(a) Real property purchased under this chapter shall be  
11 occupied by the purchaser at all times [~~during the ten year~~  
12 ~~restriction period set forth in section 201H-47,~~] while owned by  
13 the purchaser, except in hardship circumstances where the  
14 inability to reside on the property arises out of unforeseeable  
15 job or military transfer, a temporary educational sabbatical,  
16 serious illness of the person, or in other hardship  
17 circumstances as determined by the corporation on a case-by-case  
18 basis.

19           ~~[The corporation may waive the owner occupancy requirement~~  
20 ~~for a total of not more than ten years after the purchase of the~~  
21 ~~dwelling, during which time the dwelling unit may be rented or~~  
22 ~~leased. Waivers may be granted only to qualified residents who~~



1 ~~have paid resident state income taxes during all years in which~~  
2 ~~they occupied the dwelling, who continue to pay resident state~~  
3 ~~income taxes during the waiver period, and whose inability to~~  
4 ~~reside on the property does not stem from a natural disaster.~~  
5 ~~The ten-year owner occupancy requirement shall be extended by~~  
6 ~~one month for every month or fraction thereof that the owner~~  
7 ~~occupancy requirement is waived.~~

8 ~~The corporation shall adopt rules under chapter 91 to~~  
9 ~~implement the letter and spirit of this subsection and to~~  
10 ~~prescribe necessary terms and conditions. The rules shall~~  
11 ~~include:~~

- 12 ~~(1) Application and approval procedures for the waivers;~~  
13 ~~(2) Exceptions authorized by this subsection;~~  
14 ~~(3) The amounts of rents that may be charged by persons~~  
15 ~~allowed to rent or lease a dwelling unit; and~~  
16 ~~(4) Schedules of fees needed to cover administrative~~  
17 ~~expenses and attorneys' fees.~~

18 ~~No qualified resident who fails to reoccupy a dwelling unit~~  
19 ~~after any waiver period shall receive more than the maximum to~~  
20 ~~which the person would be entitled under section 201H-47. Any~~  
21 ~~person who disagrees with the corporation's determination under~~



1 ~~this section shall be entitled to a contested case proceeding~~  
2 ~~under chapter 91.~~

3 (b) From time to time the corporation may submit a  
4 verification of owner-occupancy form to the purchaser. Failure  
5 to respond to the verification in a timely manner or violation  
6 of subsection (a) shall be sufficient reason for the  
7 corporation~~[, at its option,]~~ to require the sale to a qualified  
8 resident or purchase the unit as provided in section ~~[201H-~~  
9 ~~47(a)(1), (2), or (4), as applicable.]~~ 201H-47."

10 SECTION 5. Section 201H-50, Hawaii Revised Statutes, is  
11 amended to read as follows:

12 "[~~+~~] §201H-50 [~~+~~] **Restrictions on use, sale, and transfer of**  
13 **real property; effect of amendment or repeal.** (a) Restrictions  
14 on the use, sale, and transfer of real property shall be made as  
15 uniform as possible in application to purchasers of all real  
16 property, and restrictions shall be conformed with agreement of  
17 the purchaser to reflect change or repeal made by any subsequent  
18 legislative act, ordinance, rule, or regulation. Purchasers  
19 shall be permitted at their election to sell or transfer real  
20 property subject to restrictions in effect at the time of their  
21 sale or transfer.



1           (b) The corporation, any department of the State, or any  
2 county housing agency maintaining restrictions, through  
3 contract, deed, other instrument, or by rule, shall notify  
4 purchasers of any substantial change in restrictions made by  
5 law, ordinance, rule, or regulation not more than one hundred  
6 eighty days after a change in restrictions. The notice shall  
7 clearly state the enacted or proposed new provisions, the date  
8 or dates upon which they are to be effective, and offer to each  
9 purchaser of real property constructed and sold prior to the  
10 effective date an opportunity to modify the existing contract or  
11 other instrument to incorporate the most recent provisions.  
12 Public notice shall also be given at least three times in the  
13 State for state agencies and at least three times in a county  
14 for county agencies.

15           (c) For all purchasers of real property prior to June 25,  
16 1990, where the restrictions on use and transfer of property  
17 apply for a period of time, the period of time shall not be  
18 increased beyond the date calculated from the date of original  
19 purchase.

20           (d) No purchaser shall be entitled to modify the  
21 restrictions on use, transfer, or sale of the real property,  
22 without the written permission of the holder of a duly-recorded



1 first mortgage on the dwelling unit and the owner of the fee  
2 simple or leasehold interest in the land underlying the unit,  
3 unless the holder of the first mortgage or the owner is an  
4 agency of the State or its political subdivisions.

5 (e) ~~[This section]~~ Sections 201H-47 to 201H-51 shall apply  
6 to all real property developed, constructed, and sold pursuant  
7 to this chapter and similar programs in the State or its  
8 political subdivisions and ~~[which]~~ are sold on the condition  
9 that the purchaser accepts restrictions on the use, sale, or  
10 transfer of interest in the real property purchased.

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

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

20 (h) Notwithstanding any other provision of this section,  
21 the amendments made by this Act shall not apply to a purchaser  
22 of real property under this chapter or any similar county





1 program if the purchase or transfer was recorded before July 1,  
2 2009."

3 SECTION 6. Section 201H-51, Hawaii Revised Statutes, is  
4 amended by amending subsection (a) to read as follows:

5 "(a) Notwithstanding any provisions to the contrary,  
6 [~~during the period in which the restrictions in section 201H-47~~  
7 ~~are in effect,~~] the following provisions shall apply when  
8 dwelling units developed, constructed, financed, purchased, or  
9 sold pursuant to Act 105, Session Laws of Hawaii 1970, as  
10 amended, are found to have a substantial construction defect, or  
11 when vacant lands developed, financed, purchased, or sold  
12 pursuant to Act 105, Session Laws of Hawaii 1970, as amended,  
13 are found to have a substantial soil defect:

14 (1) The corporation shall have the right, but not the  
15 obligation, to repurchase a dwelling unit or land that  
16 has a defect, regardless of whether or not the owner  
17 wishes to sell; provided that those repurchases shall  
18 be in accordance with the following provisions:

19 (A) The corporation may repurchase a dwelling unit or  
20 land if:

21 (i) The dwelling unit or land is deemed unsafe  
22 by the county building department;



- 1           (ii) The defects are irreparable; or
- 2           (iii) In the opinion of the corporation, the
- 3                 defect is of such magnitude that it will
- 4                 take longer than one year to repair;
- 5           (B) The corporation's purchase price shall be based
- 6                 on the formula set forth in section
- 7                 201H-47(a)(1);
- 8           (C) After repairs to the unit or land are completed,
- 9                 the former owner shall have the first right of
- 10                refusal to repurchase the real property;
- 11           (D) The corporation shall give preference in all
- 12                other projects of the corporation to all owners
- 13                whose real property is repurchased by the
- 14                corporation under this subsection, and the
- 15                corporation may waive certain eligibility
- 16                requirements for these owners; and
- 17           (E) If the corporation exercises its right to
- 18                repurchase defective real property against an
- 19                owner's wishes pursuant to this paragraph, the
- 20                corporation shall provide relocation assistance
- 21                to that owner as provided in chapter 111;



1           (2) If the corporation does not opt to repurchase  
2           defective real property, the corporation shall also  
3           have the right, but not the obligation, to enter into  
4           a contract to repair a dwelling unit [~~which~~] that has  
5           a construction defect or land [~~which~~] that has a soil  
6           defect. During the period that the real property is  
7           being repaired, the corporation shall rent that real  
8           property from the owner for an amount not to exceed  
9           the owner's present mortgage payments; and

10          (3) If the corporation does not execute either a contract  
11          to repurchase the real property or an agreement to  
12          repair and rent the real property within ninety days  
13          after written notice is given to the corporation of a  
14          construction defect, the owner may pursue any other  
15          available legal remedies.

16          For the purposes of this section:

17          "Substantial construction defect" includes but is not  
18          limited to:

19           (1) Structural defects such as shifting foundations and  
20           bearing walls;

21           (2) Structural deficiencies due to the use of defective or  
22           undersized materials; and



1 (3) Defects affecting the health and safety of occupants.

2 "Substantial soil defect" means shifting, sliding, or  
3 sinking ground of such degree as to affect the dwelling unit on  
4 the land or the health and safety of the occupants of the land."

5 SECTION 7. Statutory material to be repealed is bracketed  
6 and stricken. New statutory material is underscored.

7 SECTION 8. This Act shall take effect on July 1, 2009.

8

INTRODUCED BY:

Calvin K. Boy

JAN 28 2009



**Report Title:**

Affordable Housing; Sale Restriction

**Description:**

Provides that the restriction on the resale of affordable housing to "qualified residents" shall apply in perpetuity instead of only 10 years.

