

JAN 26 2009

A BILL FOR AN ACT

RELATING TO SUSTAINABLE AFFORDABLE HOUSING.

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

1 SECTION 1. The legislature finds that the cost of living
2 in Hawaii has been and continues to be high. A significant
3 contributing factor to the high cost of living is the high cost
4 of housing, and the high cost of land contributes significantly
5 to the high cost of housing. For this and other reasons, there
6 continues to be a shortage of affordable housing in many areas
7 of the State, notwithstanding significant declines in housing
8 prices nationally. The legislature further finds that efforts
9 of both the public and private sectors to provide affordable
10 housing are undermined if the initial purchasers of such housing
11 are allowed to re-sell their dwellings without limitations on
12 resale prices. Such efforts are likely to benefit only the
13 initial purchasers but fail to address the need for sustained
14 affordability.

15 SECTION 2. Chapter 201H, Hawaii Revised Statutes, is
16 amended by adding a new section to be appropriately designated
17 and to read as follows:



1 "§201H- Sustainable affordable housing developed on
2 state land. (a) With respect to any residential property
3 developed on land purchased or leased from the State of Hawaii
4 or any department, agency, or instrumentality thereof, after the
5 date of enactment of this law, not less than per cent of the
6 total residential floor area in the development shall constitute
7 affordable housing and shall be sold pursuant to sustainable
8 affordable leases.

9 (b) For purposes of this section:
10 "Affordable housing" has the same meaning as in section
11 201H-57.

12 "Sustainable affordable lease" has the same meaning as in
13 section 516-1, regardless of whether the housing is in a
14 sustainable affordable development as defined therein.

15 (c) The restrictions prescribed in this section shall be
16 automatically extinguished under the same circumstances as
17 described in section 201H-47(e).

18 (d) The provisions of this section shall be incorporated
19 in any deed, lease, agreement of sale, or any other instrument
20 of conveyance issued by the seller of the dwelling unit."

21 SECTION 3. Section 201H-47, Hawaii Revised Statutes, is
22 amended to read as follows:

1 "§201H-47 Real property; restrictions on transfer; waiver
2 of restrictions. (a) The following restrictions shall apply to
3 the transfer of real property developed and sold under this
4 chapter, whether in fee simple or leasehold:

5 (1) For a period of ten years after the purchase, whether
6 by lease, assignment of lease, deed, or agreement of
7 sale, if the purchaser wishes to transfer title to the
8 real property, the corporation shall have the first
9 option to purchase the real property at a price that
10 shall not exceed the sum of:

11 (A) The original cost to the purchaser, as defined in
12 rules adopted by the corporation;

13 (B) The cost of any improvements added by the
14 purchaser, as defined in rules adopted by the
15 corporation; and

16 (C) Simple interest on the original cost and capital
17 improvements to the purchaser at the rate of one
18 per cent a year;

19 (2) The corporation may purchase the real property either:

20 (A) By conveyance free and clear of all mortgages and
21 liens; or



1 (B) By conveyance subject to existing mortgages and
2 liens.

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

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

- 19 (i) Any first mortgage created for the purpose
20 of securing the payment of a loan of funds
21 expended solely for the purchase of the real
22 property by the seller;



1 (ii) Any mortgage insured or held by a federal
2 housing agency; and

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

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

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

17 (4) After the end of the tenth year from the date of
18 purchase or execution of an agreement of sale, the
19 purchaser may sell the real property [~~and sell or~~
20 ~~assign the property free from any price restrictions;~~]
21 for total consideration that does not exceed the
22 maximum resale price; provided that the purchaser



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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~~



1 ~~purchase or execution of the agreement of sale of~~
2 ~~the real property. If any proposed sale or~~
3 ~~transfer will not generate an amount sufficient~~
4 ~~to pay the corporation the sum as computed under~~
5 ~~this paragraph, the corporation shall have the~~
6 ~~first option to purchase the real property at a~~
7 ~~price that shall not exceed the sum as computed~~
8 ~~under paragraphs (1) and (2); and~~

9 ~~(D) The] corporation's share of appreciation in the~~
10 ~~real property as determined under rules adopted~~
11 ~~pursuant to chapter 91, when applicable[; and~~

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

17 The same resale requirements shall apply to each
18 successive owner.

19 (b) For a period of ten years after the purchase, whether
20 by lease, assignment of lease, deed, or agreement of sale, if
21 the purchaser wishes to transfer title to the real property, and
22 if the corporation does not exercise the option to purchase the



1 real property as provided in subsection (a), then the
2 corporation shall require the purchaser to sell the real
3 property to a "qualified resident" as defined in section
4 201H-32, [~~and upon the terms that preserve the intent of this~~
5 ~~section and sections 201H-49 and 201H-50, and in accordance with~~
6 ~~rules adopted by the corporation.~~] for total consideration that
7 does not exceed the maximum resale price, and the same resale
8 requirements shall apply to each successive owner.

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

11 (1) The purchaser wishes to transfer title to the real
12 property by devise or through the laws of descent to a
13 family member who would otherwise qualify under rules
14 established by the corporation;

15 (2) The sale or transfer of the real property would be at
16 a price and upon terms that preserve the intent of
17 this section without the necessity of the State
18 repurchasing the real property; provided that, in this
19 case, the purchaser shall sell the unit or lot and
20 sell or assign the property to a person who is a
21 "qualified resident" as defined in section 201H-32;
22 and provided further that the purchaser shall pay to



1 the corporation its share of appreciation in the unit
2 as determined in rules adopted pursuant to chapter 91,
3 when applicable; or

4 (3) The sale or transfer is of real property subject to a
5 sustainable affordable lease as defined in section
6 516-1.

7 (d) The corporation may release the restrictions
8 prescribed in subsection (a) or (b) if the real property is
9 financed under a federally subsidized mortgage program and the
10 restrictions would jeopardize the federal government's ability
11 to recapture any interest credit subsidies provided to the
12 homeowner.

13 (e) The restrictions prescribed in this section and
14 sections 201H-49 to 201H-51 shall be automatically extinguished
15 and shall not attach in subsequent transfers of title when a
16 mortgage holder or other party becomes the owner of the real
17 property pursuant to a mortgage foreclosure, foreclosure under
18 power of sale, or a conveyance in lieu of foreclosure after a
19 foreclosure action is commenced; or when a mortgage is assigned
20 to a federal housing agency. Any law to the contrary
21 notwithstanding, a mortgagee under a mortgage covering real
22 property or leasehold interest encumbered by the first option to



1 purchase in favor of the corporation, prior to commencing
2 mortgage foreclosure proceedings, shall notify the corporation
3 in writing of:

4 (1) Any default of the mortgagor under the mortgage within
5 ninety days after the occurrence of the default; and

6 (2) Any intention of the mortgagee to foreclose the
7 mortgage under chapter 667;

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

17 (f) The provisions of this section shall be incorporated
18 in any deed, lease, agreement of sale, or any other instrument
19 of conveyance issued by the corporation. In any sale by the
20 corporation of real property for which a subsidy or deferred
21 sales price was made by the corporation, the amount of the
22 subsidy or deferred sales price described in subsection



1 (a) (4) (B), a description of the cost items that constitute the
2 subsidy or deferred sales price, and the conditions of the
3 subsidy or deferred sales price shall be clearly stated at the
4 beginning of the contract document issued by the corporation.

5 (g) This section need not apply to market-priced units in
6 an economically integrated housing project, except as otherwise
7 determined by the developer of the units; provided that
8 preference shall be given to qualified residents in the initial
9 sale of market-priced units.

10 (h) The corporation is authorized to waive any of the
11 restrictions set forth in this section in order to comply with
12 or conform to requirements set forth in federal law or
13 regulations governing mortgage insurance or guarantee programs
14 or requirements set forth by federally chartered secondary
15 mortgage market participants.

16 (i) For purposes of subsection (a) (4) and subsection (b),
17 the "maximum resale price" shall be the sum of the following
18 items:

- 19 (1) The current owner's purchase price for the property;
20 (2) Appreciation on the property as measured by
21 multiplying the amount in paragraph (1) by the
22 increase in the consumer price index for all urban



1 consumers as determined by the United States
2 Department of Labor for the applicable county, or if
3 not published for the county, then for the State, from
4 the date of the purchase to the date of the contract
5 for resale; and
6 (3) The cost of all capital improvements made by the
7 current owner."

8 SECTION 4. Section 206E-15, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "**§206E-15 Residential projects; cooperative agreements.**

11 (a) If the authority deems it desirable to develop a
12 residential project, it may enter into an agreement with
13 qualified persons to construct, maintain, operate, or otherwise
14 dispose of the residential project. Sale, lease, or rental of
15 dwelling units in the project shall be as provided by the rules
16 established by the authority. The authority may enter into
17 cooperative agreements with the Hawaii housing finance and
18 development corporation for the financing, development,
19 construction, sale, lease, or rental of dwelling units and
20 projects.

21 (b) The authority may transfer the housing fees collected
22 from private residential developments for the provision of



1 housing for residents of low- or moderate-income to the Hawaii
 2 housing finance and development corporation for the financing,
 3 development, construction, sale, lease, or rental of such
 4 housing within or without the community development districts.
 5 The fees shall be used only for projects owned by the State or
 6 owned or developed by a qualified nonprofit organization. For
 7 the purposes of this section, "nonprofit organization" means a
 8 corporation, association, or other duly chartered organization
 9 registered with the State, which organization has received
 10 charitable status under the Internal Revenue Code of 1986, as
 11 amended.

12 (c) Any residential project constructed within the
 13 community development district, or outside the district pursuant
 14 to section 206E-4(18), shall meet the following requirements:

15 (1) Not less than twenty per cent of the total residential
 16 floor area in the residential project shall be
 17 reserved housing as defined in section 206E-101 and,
 18 if sold, shall be sold pursuant to sustainable
 19 affordable leases; and

20 (2) The requirement in paragraph (1) shall be increased to
 21 twenty-five per cent with respect to planned



1 developments that are located on lots of three acres
2 or more or that are part of a master planned area.

3 For purposes of this subsection, "sustainable affordable
4 lease" has the same meaning as in section 516-1, regardless of
5 whether the housing is in a sustainable affordable development
6 as defined therein."

7 SECTION 5. Section 206E-101, Hawaii Revised Statutes, is
8 amended by amending the definition of "reserved housing" to read
9 as follows:

10 "Reserved housing" means housing that is designated for
11 ~~[residents in the low or moderate income ranges]~~ and affordable
12 to households with incomes at or below one hundred forty per
13 cent of the median family income as determined by the United
14 States Department of Housing and Urban Development who meet such
15 other eligibility requirements as the authority may adopt by
16 rule."

17 SECTION 6. Statutory material to be repealed is bracketed
18 and stricken. New statutory material is underscored.

19 SECTION 7. This Act shall take effect upon its approval.

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S.B. NO. 1121

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Report Title:

Sustainable Affordable Housing

Description:

Requires a portion of housing units in residential developments constructed with state assistance, on land purchase or leased from the State and on land located in a community development district, to be sold pursuant to restrictions that ensure continued affordability over time.

