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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 facilitate the  
2 collection of the shared appreciation equity lien, deferred  
3 sales price lien, and excess proceeds in lieu of any buyback,  
4 imposed by the State on the sale of affordable housing  
5 properties that received assistance from the Hawaii housing  
6 finance and development corporation, which are undergoing  
7 foreclosure.

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

10           1. By amending subsection (a) to read:

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

14           (1) For a period of ten years after the purchase, whether  
15 by lease, assignment of lease, deed, or agreement of  
16 sale, if the purchaser wishes to transfer title to the  
17 real property, the corporation shall have the first

1 option to purchase the real property at a price that  
2 shall not exceed the sum of:

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

5 (B) The cost of any improvements added by the  
6 purchaser, as defined in rules adopted by the  
7 corporation; and

8 (C) Simple interest on the original cost and capital  
9 improvements to the purchaser at the rate of one  
10 per cent a year;

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

12 (A) By conveyance free and clear of all mortgages and  
13 liens; or

14 (B) By conveyance subject to existing mortgages and  
15 liens.

16 If the real property is conveyed in the manner  
17 provided in subparagraph (A), it shall be conveyed to  
18 the corporation only after all mortgages and liens are  
19 released. If the real property is conveyed in the  
20 manner provided in subparagraph (B), the corporation  
21 shall acquire the property subject to any first  
22 mortgage created for the purpose of securing the

1 payment of a loan of funds expended solely for the  
2 purchase of the real property by the seller; and any  
3 mortgage or lien created for any other purpose  
4 provided that the corporation has previously consented  
5 to it in writing.

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

10 (i) Any first mortgage created for the purpose  
11 of securing the payment of a loan of funds  
12 expended solely for the purchase of the real  
13 property by the seller;

14 (ii) Any mortgage insured or held by a federal  
15 housing agency; and

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

19 The amount paid by the corporation to the seller shall  
20 be the difference, if any, between the purchase price  
21 determined by paragraph (1) (A) to (C), and the total

1 of the outstanding principal balances of the mortgages  
2 and liens assumed by the corporation;

3 (3) A purchaser may refinance real property developed and  
4 sold under this chapter; provided that the purchaser  
5 shall not refinance the real property within ten years  
6 from the date of purchase for an amount in excess of  
7 the purchase price as determined by paragraph (1) (A)  
8 to (C); provided further that the purchaser shall  
9 obtain the corporation's written consent if any  
10 restriction on the transfer of the real property  
11 remains applicable;

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

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

20 (B) Any subsidy or deferred sales price made by the  
21 corporation in the acquisition, development,  
22 construction, and sale of the real property, and

1 any other amount expended by the corporation not  
2 counted as costs under section 201H-45 but  
3 charged to the real property by good accounting  
4 practice as determined by the corporation whose  
5 books shall be prima facie evidence of the  
6 correctness of the costs;

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

1 price that shall not exceed the sum as computed  
2 under paragraphs (1) and (2); and

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

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

12 (6) Notwithstanding any provision in this section to the  
13 contrary, the corporation's share of appreciation in  
14 the real property described in paragraph (4)(D):

15 (A) Shall apply when the sales price of the real  
16 property that is developed and sold under this  
17 chapter is less than the then-current,  
18 unencumbered, fair market value of the real  
19 property as determined by a real property  
20 appraisal obtained prior to the closing of the  
21 sale;

1           (B) Shall be a restriction that runs with the land  
2           until it is paid in full and released by the  
3           corporation, or extinguished pursuant to  
4           subsection (e); and

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

7           2. By amending subsection (c) to read:

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

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

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

1 appreciation in the [~~unit~~] real property as determined  
2 in rules adopted pursuant to chapter 91, when  
3 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 3. By amending subsections (e) and (f) to read:

8 "(e) The restrictions prescribed in this section and  
9 sections 201H-49 to 201H-51 shall be automatically extinguished  
10 and shall not attach in subsequent transfers of title when a  
11 mortgage holder or other party becomes the owner of the real  
12 property pursuant to a mortgage foreclosure, foreclosure under  
13 power of sale, or a conveyance in lieu of foreclosure after a  
14 foreclosure action is commenced; provided that the mortgage is  
15 the initial purchase money mortgage, or that the corporation  
16 consented to and agreed to subordinate the restrictions to the  
17 mortgage when originated, if the mortgage is not the initial  
18 purchase money mortgage; or when a mortgage is assigned to a  
19 federal housing agency. Any law to the contrary  
20 notwithstanding, a mortgagee under a mortgage covering real  
21 property or leasehold interest encumbered by the first option to  
22 purchase in favor of the corporation, prior to commencing



1 mortgage foreclosure proceedings, shall notify the corporation  
2 in writing of:

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

5 (2) Any intention of the mortgagee to foreclose the  
6 mortgage under chapter 667[+] forty-five days prior to  
7 commencing mortgage foreclosure proceedings;

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 its share of  
12 appreciation in the real property as determined under this  
13 chapter in lien priority when the payment is applicable, and if  
14 foreclosure occurs within the ten-year period after the  
15 purchase, the corporation shall also be entitled to all proceeds  
16 remaining in excess of all customary and actual costs and  
17 expenses of transfer pursuant to default, including liens and  
18 encumbrances of record; provided that the person in default  
19 shall be entitled to an amount [~~which~~] that shall not exceed the  
20 sum of amounts determined pursuant to subsection (a)(1)(B) and  
21 (C).

1 (f) The provisions of this section shall be incorporated  
2 in any deed, lease, agreement of sale, or any other instrument  
3 of conveyance issued by the corporation. In any sale by the  
4 corporation of real property for which a subsidy or deferred  
5 sales price was made by the corporation, the amount of the  
6 subsidy or deferred sales price described in subsection  
7 (a) (4) (B), a description of the cost items that constitute the  
8 subsidy or deferred sales price, and the conditions of the  
9 subsidy or deferred sales price shall be clearly stated at the  
10 beginning of the contract document issued by the corporation.  
11 In any sale in which the corporation's share of appreciation in  
12 real property is a restriction, the terms of the shared  
13 appreciation equity program shall be clearly stated and included  
14 as an exhibit in any deed, lease, agreement of sale, or any  
15 other instrument of conveyance."

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

18 "(a) Restrictions on the use, sale, and transfer of real  
19 property shall be made as uniform as possible in application to  
20 purchasers of all real property, and restrictions shall be  
21 conformed with agreement of the purchaser to reflect change or  
22 repeal made by any subsequent legislative act, ordinance, rule,

1 or regulation. Purchasers shall be permitted at their election  
2 to sell or transfer real property subject to restrictions in  
3 effect at the time of their sale or transfer~~[ ]~~; provided that  
4 the corporation is paid its share of appreciation in the real  
5 property as determined by rules adopted pursuant to chapter 91,  
6 as applicable."

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

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

**Report Title:**

Affordable Housing; Shared Appreciation Equity

**Description:**

Enables the Hawaii housing finance and development corporation to more easily collect the value of shared appreciation equity and other restrictions when an affordable housing property is publicly sold through a foreclosure. Requires written notification of intent to foreclose on properties encumbered by such priority liens. (SD2)