
A BILL FOR AN ACT

RELATING TO RESIDENTIAL REAL ESTATE.

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

1 SECTION 1. The Hawaii Revised Statutes is amended by
2 adding a new chapter to be appropriately designated and to read
3 as follows:

4 "CHAPTER

5 **RIGHT OF FIRST REFUSAL FOR THE SALE OF RESIDENTIAL REAL PROPERTY**

6 § -1 **Purpose and declaration of necessity.** The
7 legislature finds that two of the founding purposes of the
8 United States, promoting the public welfare and securing
9 liberty, enumerated in the Constitution of the United States are
10 clearly served by ensuring that as many people as possible
11 secure ownership over the property upon which they reside. The
12 Hawaii State Constitution echoes this objective in its
13 declaration that "all persons are free by nature and are equal
14 in their inherent and inalienable rights. Among these rights
15 are the enjoyment of life, liberty, and the pursuit of
16 happiness, and the acquiring and possessing of property." The
17 legislature finds that the operation of the State's current real



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1 estate market does not promote the right of Hawaii's residents
2 to acquire and possess residential property in their home state
3 as guaranteed by the Hawaii State Constitution.

4 The legislature further finds home ownership by the people
5 of the State deeply impacts the stability of the lives of Hawaii
6 residents and the State's economy, broadens the tax base, and
7 promotes investment in the future of the State. Therefore,
8 overcoming the barriers to homeownership is a high priority of
9 the State.

10 In recent years, the legislature notes that the growth of
11 Hawaii's population has outpaced that of new home construction.
12 The result is a severe shortage in the supply of available
13 housing for purchase. Concomitantly, demand for residential
14 real property has sharply increased. According to the Hawaii
15 housing finance and development corporation's *Hawaii Housing*
16 *Planning Study, 2011*, as many as fifty thousand dwelling units
17 would need to be constructed between 2012 and 2016 to meet new
18 demand for housing generated by changing demographic and
19 economic factors. However, from 1990 to 2010, the number of
20 units added each year ranged from three thousand five hundred to
21 eleven thousand. As reported in 2011, Hawaii ranked number



1 forty-eight in the country for homeownership. With these
2 statistics in mind, it is anticipated that the shortage in
3 available homes for purchase will continue into the future and
4 many Hawaii residents will continue to be unable to purchase
5 homes.

6 The legislature acknowledges that the participation of out-
7 of-state and foreign buyers in Hawaii's real estate market
8 greatly exacerbates the housing shortage problem. As reported
9 in 2011, out-of-state ownership accounted for large portions of
10 Hawaii's housing market. In the most extreme cases,
11 nonresidents owned nearly seventy and seventy-four per cent of
12 all condo units in Maui and Kauai counties, respectively. While
13 some of these buyers actually move to Hawaii to occupy the real
14 estate they purchase, a large number purchase these properties
15 solely to profit from their resale or rental or for use as
16 seasonal homes, which leaves them vacant the majority of the
17 time. As reported in 2011, almost six per cent of Hawaii's
18 housing stock was reserved for seasonal or occasional use.
19 Properties that are not owner-occupied take ownership
20 opportunities away from local residents.



1 The legislature further finds that the high cost of living
2 makes it increasingly difficult for Hawaii residents to save
3 enough money for an industry-standard twenty per cent down
4 payment. Furthermore, the United States Census Bureau's 2009-
5 2013 Five-Year American Community Survey shows that over forty
6 per cent of Hawaii residents rent their homes. Many Hawaii
7 residents rent from nonresident investor owners, often with a
8 cost and terms that are disadvantageous to the renter. These
9 high costs prohibit saving and create a further barrier to
10 buying a home in the future.

11 Meanwhile, the legislature notes that many nonresident real
12 estate buyers are either individuals who benefit from lower
13 costs of living in their home states or countries and favorable
14 exchange rates, or are corporate or commercial investor
15 entities. These buyers are often able to make significant down
16 payments or all-cash offers and offer more than the asking price
17 when competing against Hawaii residents. These factors drive up
18 prices for residential housing statewide and, combined with the
19 veiled offer process, often mean that Hawaii buyers are unable
20 to compete with nonresidents for Hawaii's limited residential
21 properties.



1 The legislature finds that Hawaii has a unique history of
2 landownership that has been characterized by a concentration of
3 the fee title to lands in the hands of the few. In 1967, the
4 legislature determined that approximately three-fourths of
5 Hawaii lands were held by a few estates, trusts, and other
6 private owners. The use of this land was largely granted by
7 lease agreements that were disadvantageous to developers and
8 private purchasers and, in the face of a growing population, led
9 to serious shortages of residential fee simple property in the
10 State's urban areas and artificially inflated the cost of fee
11 simple and residential lots.

12 To protect the public and ensure ownership rights to Hawaii
13 land for as many people as possible, the legislature enacted the
14 Land Reform Act of 1967. The Act implemented a mechanism for
15 condemning residential tracts and transferring ownership of the
16 condemned fees simple to existing lessees. The Act was
17 challenged as an illegal taking under the United States
18 Constitution, but was upheld by the United States Supreme Court.
19 In reviewing the issue, the Supreme Court stated that
20 determining public purpose was the province of the legislature,
21 and "the Court has made clear that it will not substitute its



1 judgment for a legislature's judgment as to what constitutes a
2 public use 'unless the use be palpably without reasonable
3 foundation.'" *Hawaii Housing Authority v. Midkiff*, 467 U.S. 229,
4 241.

5 The legislature declares that the participation of
6 nonresident buyers in Hawaii's real estate market is a
7 significant impediment to home ownership for Hawaii residents
8 and is contrary to the objectives of the state and federal
9 constitutions. Further, promoting owner-occupancy of
10 residential real property in Hawaii is vital for the welfare and
11 security of the people, the effective use of the State's limited
12 resources, and the stabilization and sustainable growth of the
13 State's economy. Safeguarding opportunities for resident home
14 ownership promotes the public interest, health, welfare,
15 security, and happiness.

16 The purpose of this chapter is to alleviate the significant
17 challenges faced by Hawaii residents in purchasing a home by
18 requiring a seller who wishes to sell their residential real
19 property to a nonresident buyer to first notify Hawaii residents
20 of that intent and grant the right of first refusal to
21 qualifying Hawaii buyers.



1 **§ -2 Definitions.** When used in this chapter, unless the
2 context requires otherwise:

3 "Family member" means an individual who is related to
4 another by blood, marriage, adoption, or as a reciprocal
5 beneficiary.

6 "Nonresident buyer" means any individual who is not a
7 resident buyer.

8 "Reside" means to be in the State for other than a
9 temporary or transitory purpose, and that the individual does
10 not maintain a permanent place of residence outside the State.

11 "Resident buyer" means an individual who:

- 12 (1) Resides in the State for at least six continuous
13 months prior to making an offer to purchase a
14 residential real property;
- 15 (2) Intends to make the residential real property the
16 individual's primary place of residence upon purchase;
17 and
- 18 (3) (A) Is a first-time home buyer; or
19 (B) Owns or owned real property that is or was used
20 as the individual's most recent primary place of
21 residence; provided that if the individual owns



1 the other real property at the time the
2 residential real property is purchased, the
3 individual shall sell the real property within
4 one year of the transaction.

5 "Residential real property" means fee simple or leasehold
6 real property located in the State, upon which currently is
7 constructed or is to be constructed a dwelling unit, including a
8 condominium or cooperative apartment, the primary use of which
9 is occupancy as a principal place of residence.

10 **§ -3 Right of first refusal.** (a) Except as provided in
11 this chapter, when residential real property is to be sold to a
12 nonresident buyer, the seller shall first publish notice of the
13 seller's intent to sell the residential real property to a
14 nonresident buyer, together with:

15 (1) A complete and correct copy of the nonresident buyer's
16 written offer, which offer shall contain the full and
17 complete terms thereof; or

18 (2) A summary that includes the essential elements of the
19 nonresident buyer's written offer and the terms
20 thereof.



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1 Resident buyers shall have a right of first refusal to purchase
2 the residential real property for the same price as is contained
3 in the written purchase offer.

4 (b) To satisfy the notice requirements of this section, a
5 seller must provide notice within _____ days of receiving the
6 offer of the nonresident buyer to whom the residential real
7 property is to be sold, as follows:

8 (1) By publication:

9 (A) In a daily or weekly publication of statewide
10 circulation; or

11 (B) By publication in separate daily or weekly
12 publications whose combined circulation is
13 statewide; and

14 (2) By posting on the department of commerce and consumer
15 affairs' website.

16 The department of commerce and consumer affairs shall maintain a
17 forum on its website where any seller subject to this chapter
18 may post notice as required herein.

19 (c) Resident buyers shall have _____ days from the time
20 notice appears by publication or posting on the department of
21 commerce and consumer affairs' website, whichever occurs later,



1 to submit an offer in writing. If the seller receives an offer
2 from a resident buyer matching the price of the nonresident
3 buyer's offer, the seller shall accept the resident buyer's
4 offer; provided that where one or more matching offers are
5 received from resident buyers, the seller may select from the
6 resident buyers' offers at the seller's discretion.

7 (d) The right of first refusal shall be deemed to be
8 rejected if no resident buyer submits an offer in writing after
9 publication of notice in accordance with section -2, or if
10 the sale, through no fault of the seller, has not closed upon
11 within days of such notice. In the event that closing is
12 delayed due to any fault of the seller, the deadline for closing
13 shall be extended for a period of time equal to the delay caused
14 by the seller.

15 **§ -4 Improvements.** The right of first refusal to
16 purchase residential real property created by this chapter shall
17 be deemed to include the right to purchase the interest of the
18 seller in any and all improvements on such residential real
19 property.

20 **§ -5 Violations; voidable sale.** Any sale made in
21 violation of this chapter shall be voidable at the option of a



1 resident buyer who submitted an offer in conformity with the
2 requirements of this chapter. If any sale is so voided,
3 resident buyers shall then have the right to submit offers for
4 the residential real property that had been conveyed by virtue
5 of such sale for the same price as pertained to the sale so
6 voided.

7 **§ -6 Exception.** This chapter shall not apply to the sale
8 of residential real property to a family member."

9 SECTION 2. This Act shall take effect on January 1, 2016.

10

INTRODUCED BY: Ben Kobayashi

JAN 29 2015



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Report Title:

Right of First Refusal; Residential Real Property

Description:

Requires that sellers give qualifying Hawaii residents the right of first refusal in the sale of residential real property.

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