
A BILL FOR AN ACT

RELATING TO AFFORDABLE HOUSING.

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

1 SECTION 1. The legislature finds that the shortage of
2 safe, decent, and sanitary housing has been a persistent problem
3 in Hawaii for decades. Almost 50 years ago, in 1970, the Hawaii
4 state legislature recognized the need to address the severe
5 shortfall of affordable housing and passed H.B. No. 397, as
6 amended, which was enacted into law as Act 105, Session Laws of
7 Hawaii 1970, and codified as chapter 359A, Hawaii Revised
8 Statutes. This enabling legislation expanded the powers of the
9 then Hawaii Housing Authority to provide for-sale affordable
10 housing units to the general public, in addition to providing
11 affordable rental housing units. This legislation was the
12 predecessor to what is today known as the Hawaii housing finance
13 and development corporation.

14 In Act 105, the legislature noted "a critical shortage of
15 housing units for lower and middle income residents" and
16 emphasized the importance of affordable housing to the fabric of
17 society. Act 105 also cited studies indicating that the high
18 cost of housing is the result of multiple factors, including



1 "the cost and availability of land, the cost of development, the
2 cost and availability of financing, the cost added by government
3 regulation, the cost and availability of labor and materials,
4 the inflationary state of the economy", and "conflicting
5 priorities in our pluralistic society".

6 The legislature further finds that, almost a half century
7 after Act 105, the shortage of affordable housing still exists
8 and has grown to crisis proportions. With the limited amount of
9 developable land and the lack of needed infrastructure, we find
10 median prices for single family homes on Oahu hovering at around
11 \$750,000. Recent studies show a need for 60,000 housing units
12 by the year 2020. It is necessary, therefore, for the
13 legislature to take steps to preserve existing affordable
14 housing units for as long as possible. This has not been the
15 case in recent years relative to government-assisted or mandated
16 affordable housing units. Because of the lack of financial or
17 other resources, government agencies have often opted to waive
18 their right of first refusal to repurchase housing units that
19 are sold within the designated restriction period.

20 The purpose of this Act is to:



1 (1) Allow the Hawaii community development authority to
2 transfer a right to repurchase a reserved or workforce
3 unit and transfer the right of repurchase to a
4 qualified nonprofit housing trust;

5 (2) Allow the counties to waive their right of first
6 refusal to repurchase certain privately developed
7 affordable housing units and transfer that right of
8 repurchase to a qualified nonprofit housing trust;

9 (3) Allow the Hawaii housing finance and development
10 corporation to waive its option to repurchase certain
11 real property and transfer the right of repurchase to
12 a qualified nonprofit housing trust; and

13 (4) Amend the means of calculating the maximum price for
14 the Hawaii housing finance and development
15 corporation's first option to purchase real property.

16 The intent of this Act is to create a pool of affordable housing
17 units that will remain permanently affordable through the
18 purchase and management of the units by the housing trust.

19 SECTION 2. Chapter 206E, Hawaii Revised Statutes, is
20 amended by adding a new section to be appropriately designated
21 and to read as follows:



1 "§206E- Reserved and workforce housing units; transfer
2 to qualified nonprofit housing trust. Any law to the contrary
3 notwithstanding, the authority may authorize a designated
4 qualified nonprofit housing trust to administer the covenants
5 and rules related to the reserved housing and workforce housing
6 programs. Additionally, the authority may waive its right to
7 repurchase a reserved or workforce housing unit during the
8 restriction period and may transfer that right of repurchase to
9 a qualified nonprofit housing trust for the purpose of
10 maintaining the reserved or workforce housing unit as an
11 affordable housing unit. If the repurchase rights are
12 transferred to a qualified nonprofit housing trust, the
13 restrictions prescribed in this chapter or in rules adopted by
14 the authority shall be automatically extinguished and shall not
15 attach in subsequent transfers of title; provided further that
16 the qualified nonprofit housing trust shall establish new
17 perpetual buyback restrictions in order to effectuate the long-
18 term affordability of a housing unit."

19 SECTION 3. Section 46-15.1, Hawaii Revised Statutes, is
20 amended to read as follows:



1 **"§46-15.1 Housing; county powers** (a) Any law to the
2 contrary notwithstanding, any county shall have and may exercise
3 the same powers, subject to applicable limitations, as those
4 granted the Hawaii housing finance and development corporation
5 pursuant to chapter 201H insofar as those powers may be
6 reasonably construed to be exercisable by a county for the
7 purpose of developing, constructing, and providing low- and
8 moderate-income housing; provided that no county shall be
9 empowered to cause the State to issue general obligation bonds
10 to finance a project pursuant to this section; provided further
11 that county projects shall be granted an exemption from general
12 excise or receipts taxes in the same manner as projects of the
13 Hawaii housing finance and development corporation pursuant to
14 section 201H-36; and provided further that section 201H-16 shall
15 not apply to this section unless federal guidelines specifically
16 provide local governments with that authorization and the
17 authorization does not conflict with any state laws. The powers
18 shall include the power, subject to applicable limitations, to:
19 (1) Develop and construct dwelling units, alone or in
20 partnership with developers;



- 1 (2) Acquire necessary land by lease, purchase, exchange,
2 or eminent domain;
- 3 (3) Provide assistance and aid to a public agency or other
4 person in developing and constructing new housing and
5 rehabilitating existing housing for elders of low- and
6 moderate-income, other persons of low- and moderate-
7 income, and persons displaced by any governmental
8 action, by making long-term mortgage or interim
9 construction loans available;
- 10 (4) Contract with any eligible bidders to provide for
11 construction of urgently needed housing for persons of
12 low- and moderate-income;
- 13 (5) Guarantee the top twenty-five per cent of the
14 principal balance of real property mortgage loans,
15 plus interest thereon, made to qualified borrowers by
16 qualified lenders;
- 17 (6) Enter into mortgage guarantee agreements with
18 appropriate officials of any agency or instrumentality
19 of the United States to induce those officials to
20 commit to insure or to insure mortgages under the
21 National Housing Act, as amended;



1 (7) Make a direct loan to any qualified buyer for the
2 downpayment required by a private lender to be made by
3 the borrower as a condition of obtaining a loan from
4 the private lender in the purchase of residential
5 property;

6 (8) Provide funds for a share, not to exceed fifty per
7 cent, of the principal amount of a loan made to a
8 qualified borrower by a private lender who is unable
9 otherwise to lend the borrower sufficient funds at
10 reasonable rates in the purchase of residential
11 property; and

12 (9) Sell or lease completed dwelling units.

13 For purposes of this section, a limitation is applicable to
14 the extent that it may reasonably be construed to apply to a
15 county.

16 (b) Each county shall recognize housing units developed by
17 the department of Hawaiian home lands and issue affordable
18 housing credits to the department of Hawaiian home lands. The
19 credits shall be transferable and shall be issued on a one-
20 credit for one-unit basis, unless the housing unit is eligible
21 for additional credits as provided by adopted county ordinances,



1 rules, or any memoranda of agreement between a county and the
2 department of Hawaiian home lands. In the event that credits
3 are transferred by the department of Hawaiian home lands,
4 twenty-five per cent of any monetary proceeds from the transfer
5 shall be used by the department of Hawaiian home lands to
6 develop units for rental properties. Credits shall be issued
7 for each single-family residence, multi-family unit, other
8 residential unit, whether for purposes of sale or rental, or if
9 allowed under the county's affordable housing programs, vacant
10 lot, developed by the department of Hawaiian home lands. The
11 credits may be applied county-wide within the same county in
12 which the credits were earned to satisfy affordable housing
13 obligations imposed by the county on market-priced residential
14 and non-residential developments. County-wide or project-
15 specific requirements for housing class, use, or type; or
16 construction time for affordable housing units shall not impair,
17 restrict, or condition the county's obligation to apply the
18 credits in full satisfaction of all county requirements, whether
19 by rule, ordinance, or particular zoning conditions of a
20 project. Notwithstanding any provisions herein to the contrary,
21 the department may enter into a memorandum of agreement with the



1 county of Kauai to establish, modify, or clarify the conditions
2 for the issuance, transfer, and redemption of the affordable
3 housing credits in accordance with county affordable housing
4 ordinances or rules. Notwithstanding any provisions herein to
5 the contrary, the department may enter into a memorandum of
6 agreement with the city and county of Honolulu to establish,
7 modify, or clarify the conditions for the issuance, transfer,
8 and redemption of the affordable housing credits in accordance
9 with county affordable housing ordinances or rules. At least
10 half of the affordable housing credits issued by the city and
11 county of Honolulu shall be subject to a memorandum of agreement
12 pursuant to this subsection.

13 For purposes of this section, "affordable housing
14 obligation" means the requirement imposed by a county,
15 regardless of the date of its imposition, to develop vacant
16 lots, single-family residences, multi-family residences, or any
17 other type of residence for sale or rent to individuals within a
18 specified income range.

19 (c) Any law to the contrary notwithstanding, any county
20 may:



- 1 (1) Authorize and issue bonds under chapter 47 and chapter
2 49 to provide moneys to carry out the purposes of this
3 section or section 46-15.2, including the satisfaction
4 of any guarantees made by the county pursuant to this
5 section;
- 6 (2) Appropriate moneys of the county to carry out the
7 purposes of this section;
- 8 (3) Obtain insurance and guarantees from the State or the
9 United States, or grants from either;
- 10 (4) Designate, after holding a public hearing on the
11 matter and with the approval of the respective
12 council, any lands owned by it for the purposes of
13 this section;
- 14 (5) Provide interim construction loans to partnerships of
15 which it is a partner and to developers whose projects
16 qualify for federally assisted project mortgage
17 insurance, or other similar programs of federal
18 assistance for persons of low and moderate income; and
- 19 (6) Adopt rules pursuant to chapter 91 as are necessary to
20 carry out the purposes of this section.



1 (d) Any law to the contrary notwithstanding, a county may
2 waive its right to repurchase a privately-developed affordable
3 housing unit built pursuant to a unilateral agreement or similar
4 instrument, and may transfer that right of repurchase to a
5 qualified nonprofit housing trust for the purpose of maintaining
6 the unit as affordable for as long as practicable. For the
7 purposes of this subsection, "qualified nonprofit housing trust"
8 means a corporation, association, or other duly chartered
9 organization that is registered and in good standing with the
10 State; that has received charitable status under the Internal
11 Revenue Code of 1986, as amended; and that has the capacity,
12 resources, and mission to carry out the purposes of this section
13 as determined by the county in which the housing unit is
14 located.

15 [~~(d)~~] (e) The provisions of this section shall be
16 construed liberally so as to effectuate the purpose of this
17 section in facilitating the development, construction, and
18 provision of low- and moderate-income housing by the various
19 counties.

20 [~~(e)~~] (f) For purposes of this section, "low and moderate
21 income housing" means any housing project that meets the



1 definition of "low- and moderate-income housing project" in
2 section 39A-281."

3 SECTION 4. Section 201H-1, Hawaii Revised Statutes, is
4 amended by adding a new definition to be appropriately inserted
5 and to read as follows:

6 "Qualified nonprofit housing trust" means a corporation,
7 association, or other duly chartered organization that is
8 registered and in good standing with the State; has received
9 charitable status under the Internal Revenue Code of 1986, as
10 amended; and has the capacity, resources, and mission to carry
11 out the purposes of this chapter as determined by the
12 corporation."

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

15 **"§201H-47 Real property; restrictions on transfer; waiver**
16 **of restrictions.** (a) The following restrictions shall apply to
17 the transfer of real property developed and sold under this
18 chapter, whether in fee simple or leasehold:

19 (1) For a period of ten years after the purchase, whether
20 by lease, assignment of lease, deed, or agreement of
21 sale, if the purchaser wishes to transfer title to the



1 real property, the corporation shall have the first
2 option to purchase the real property at a price that
3 shall not exceed the sum of:

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

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

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

12 (D) The corporation's share of net appreciation in
13 the real property, as determined under rules
14 adopted pursuant to chapter 91, when applicable;

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

16 (A) By conveyance free and clear of all mortgages and
17 liens; or

18 (B) By conveyance subject to existing mortgages and
19 liens.

20 If the real property is conveyed in the manner
21 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 section shall constitute a statutory lien on the real
13 property and shall be superior to any other mortgage
14 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) A purchaser may refinance real property developed and
10 sold under this chapter; provided that the purchaser
11 shall not refinance the real property within ten years
12 from the date of purchase for an amount in excess of
13 the purchase price as determined by paragraph (1) (A)
14 to (C); provided further that the purchaser shall
15 obtain the corporation's written consent if any
16 restriction on the transfer of the real property
17 remains applicable;

18 (4) After the end of the tenth year from the date of
19 initial purchase or execution of an agreement of sale,
20 the purchaser may sell the real property and sell or
21 assign the property free from any price restrictions;



1 provided that the purchaser shall be required to pay
2 to the corporation the sum of:

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

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

14 (C) Interest on the subsidy or deferred sales price,
15 if applicable, and any other amount expended at
16 the rate of seven per cent a year computed as to
17 the subsidy or deferred sales price, if
18 applicable, from the date of purchase or
19 execution of the agreement of sale, and as to any
20 amount expended, from the date of expenditure;
21 provided that the computed interest shall not



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

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

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

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



1 (A) Shall apply when the sales price of the real
2 property that is developed and sold under this
3 chapter is less than the then-current,
4 unencumbered, fair market value of the real
5 property as determined by a real property
6 appraisal obtained prior to the closing of the
7 sale;

8 (B) Shall be a restriction that runs with the land
9 until it is paid in full and released by the
10 corporation, or extinguished pursuant to
11 subsection [~~(e)~~] (f); and

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

14 (b) If the corporation waives its first option to
15 repurchase the real property provided in subsection (a), a
16 qualified nonprofit housing trust shall have the option to
17 purchase the real property at the price and in the manner set
18 forth in subsection (a).

19 [~~(b)~~] (c) For a period of ten years after the purchase,
20 whether by lease, assignment of lease, deed, or agreement of
21 sale, if the purchaser wishes to transfer title to the real



1 property, and if the corporation or the qualified nonprofit
2 housing trust selected by the corporation does not exercise the
3 option to purchase the real property as provided in subsection
4 (a) ~~[7]~~ or (b) within a reasonable amount of time, then the
5 corporation shall require the purchaser to sell the real
6 property to a "qualified resident" as defined in section 201H-
7 32, and upon the terms that preserve the intent of this section
8 and sections 201H-49 and 201H-50, and in accordance with rules
9 adopted by the corporation.

10 ~~[(e)]~~ (d) The corporation may waive the restrictions
11 prescribed in ~~[subsection]~~ subsections (a) ~~[or (b)]~~ through (c)
12 if:

- 13 (1) The purchaser wishes to transfer title to the real
14 property by devise or through the laws of descent to a
15 family member who would otherwise qualify under rules
16 established by the corporation;
- 17 (2) The sale or transfer of the real property would be at
18 a price and upon terms that preserve the intent of
19 this section without the necessity of the State
20 repurchasing the real property; provided that, in this
21 case, the purchaser shall sell the real property and



1 sell or assign the real property to a person who is a
2 "qualified resident" as defined in section 201H-32;
3 and provided further that the purchaser shall pay to
4 the corporation its share of appreciation in the real
5 property as determined in rules adopted pursuant to
6 chapter 91, when applicable; or

7 (3) The sale or transfer is of real property subject to a
8 sustainable affordable lease as defined in section
9 516-1.

10 [~~(d)~~] (e) The corporation may release the restrictions
11 prescribed in [~~subsection~~] subsections (a) [~~or (b)~~] through (c)
12 if the real property is financed under a federally subsidized
13 mortgage program and the restrictions would jeopardize the
14 federal government's ability to recapture any interest credit
15 subsidies provided to the homeowner.

16 [~~(e)~~] (f) The restrictions prescribed in this section and
17 sections 201H-49 to 201H-51 shall be automatically extinguished
18 and shall not attach in subsequent transfers of title when a
19 qualified nonprofit housing trust becomes the owner of the real
20 property pursuant to subsection (b); or a mortgage holder or
21 other party becomes the owner of the real property pursuant to a



1 mortgage foreclosure, foreclosure under power of sale, or a
2 conveyance in lieu of foreclosure after a foreclosure action is
3 commenced; provided that the mortgage is the initial purchase
4 money mortgage, or that the corporation consented to and agreed
5 to subordinate the restrictions to the mortgage when originated,
6 if the mortgage is not the initial purchase money mortgage; or
7 when a mortgage is assigned to a federal housing agency. Any
8 law to the contrary notwithstanding, a mortgagee under a
9 mortgage covering real property or leasehold interest encumbered
10 by the first option to purchase in favor of the corporation,
11 prior to commencing mortgage foreclosure proceedings, shall
12 notify the corporation in writing of:

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

15 (2) Any intention of the mortgagee to foreclose the
16 mortgage under chapter 667 forty-five days prior to
17 commencing mortgage foreclosure proceedings;

18 provided that the mortgagee's failure to provide written notice
19 to the corporation shall not affect the mortgage holder's rights
20 under the mortgage. The corporation shall be a party to any
21 foreclosure action, and shall be entitled to its share of



1 appreciation in the real property as determined under this
2 chapter in lien priority when the payment is applicable, and if
3 foreclosure occurs within the ten-year period after the
4 purchase, the corporation shall also 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 that shall not exceed the sum of
9 amounts determined pursuant to subsection (a) (1) (B) and (C).

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



1 appreciation equity program shall be clearly stated and included
2 as an exhibit in any deed, lease, agreement of sale, or any
3 other instrument of conveyance.

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

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

15 (j) Any law to the contrary notwithstanding, if real
16 property is purchased by a qualified nonprofit housing trust
17 pursuant to subsection (b), the housing trust shall establish
18 new perpetual buyback restrictions in order to effectuate the
19 long-term affordability of a housing unit."



1 SECTION 6. Section 206E-2, Hawaii Revised Statutes, is
2 amended by adding three new definitions to be appropriately
3 inserted and to read as follows:

4 "Qualified nonprofit housing trust" means a corporation,
5 association, or other duly chartered organization that is
6 registered and in good standing with the State; has received
7 charitable status under the Internal Revenue Code of 1986, as
8 amended; and has the capacity and resources as determined by the
9 authority to carry out the requirements of the reserved housing
10 and workforce housing programs.

11 "Reserved housing" means housing designated for residents
12 in the low-income or moderate-income ranges who meet such
13 eligibility requirements as the authority may adopt by rule.

14 "Workforce housing" means new residential projects where at
15 least seventy-five per cent of the residential units are set
16 aside for purchase or rent for residents in the low-income or
17 moderate-income ranges who meet such eligibility requirements as
18 the authority may adopt by rules and which do not require
19 financial assistance for design and construction from federal,
20 state or county government agencies."



1 SECTION 7. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 8. This Act does not affect rights and duties that
4 matured, penalties that were incurred, and proceedings that were
5 begun before its effective date.

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

7



Report Title:

Affordable Housing Units; Transfer

Description:

Authorizes qualified nonprofit housing trusts to repurchase affordable units developed with government assistance when a government entity waives its first right of refusal to repurchase the unit. Authorizes counties to waive a first right of refusal to repurchase a privately-developed affordable housing unit built pursuant to a unilateral agreement or similar instrument. (SD1)

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