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# A BILL FOR AN ACT

RELATING TO RESTRICTIONS ON THE TRANSFER OF REAL PROPERTY UNDER  
CHAPTER 201H, HAWAII REVISED STATUTES.

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

1       SECTION 1. Section 201H-47, Hawaii Revised Statutes, is  
2 amended to read as follows:

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

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

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



- 1 (B) The cost of any improvements added by the  
2 purchaser, as defined in rules adopted by the  
3 corporation;  
4 (C) Simple interest on the original cost and capital  
5 improvements to the purchaser at the rate of one  
6 per cent per year; and  
7 (D) The amount, if any, previously paid by the  
8 purchaser to the corporation as the corporation's  
9 share of net appreciation in the real property;  
10 (2) The corporation may purchase the real property either:  
11 (A) By conveyance free and clear of all mortgages and  
12 liens; or  
13 (B) By conveyance subject to existing mortgages and  
14 liens.

15 If the real property is conveyed in the manner  
16 provided in subparagraph (A), it shall be conveyed to  
17 the corporation only after all mortgages and liens are  
18 released. If the real property is conveyed in the  
19 manner provided in subparagraph (B), the corporation  
20 shall acquire the real property subject to any first  
21 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 section shall constitute a statutory lien on the real  
8 property and shall be superior to any other mortgage  
9 or lien, except for any first mortgage created for the  
10 purpose of securing the payment of a loan of funds  
11 expended solely for the purchase of the real property  
12 by the seller; any mortgage insured or held by a  
13 federal housing agency; and any mortgage or lien  
14 created for any other purpose; provided that the  
15 corporation has previously consented to it in writing.

16 The amount paid by the corporation to the seller shall  
17 be the difference, if any, between the purchase price  
18 determined by paragraph (1)(A) to (D), and the total  
19 of the outstanding principal balances of the mortgages  
20 and liens assumed by the corporation;



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

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

16                (A) The balance of any mortgage note, agreement of  
17                sale, or other amount owing to the corporation;  
18                (B) Any subsidy or deferred sales price made by the  
19                corporation in the acquisition, development,  
20                construction, and sale of the real property, and  
21                any other amount expended by the corporation not



1 counted as costs under section 201H-45 but  
2 charged to the real property by good accounting  
3 practice as determined by the corporation whose  
4 books shall be prima facie evidence of the  
5 correctness of the costs;

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

6 (5) Notwithstanding any provision in this section to the  
7 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 (f); and

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

7 (b) If the corporation waives its first option to  
8 repurchase the real property provided in subsection (a), a  
9 qualified nonprofit housing trust shall have the option to  
10 purchase the real property at a price that shall not exceed the  
11 sum of:

- 12 (1) The original cost to the purchaser, as defined in  
13 rules adopted by the corporation;
- 14 (2) The cost of any improvements added by the purchaser,  
15 as defined in rules adopted by the corporation;
- 16 (3) Simple interest on the original cost and capital  
17 improvements to the purchaser at the rate of one per  
18 cent per year; and
- 19 (4) The corporation's share of net appreciation in the  
20 real property to be paid as determined under rules  
21 adopted pursuant to chapter 91, when applicable.



1 (c) For a period of ten years after the purchase, whether  
2 by lease, assignment of lease, deed, or agreement of sale, if  
3 the purchaser wishes to transfer title to the real property, and  
4 if the corporation or the qualified nonprofit housing trust  
5 selected by the corporation does not exercise the option to  
6 purchase the real property as provided in subsection (a) or (b),  
7 then the corporation shall require the purchaser to sell the  
8 real property to a "qualified resident" as defined in  
9 section 201H-32, and upon the terms that preserve the intent of  
10 this section and sections 201H-49 and 201H-50, and in accordance  
11 with rules adopted by the corporation.

12 (d) The corporation may waive the restrictions prescribed  
13 in subsections (a) through (c) if:

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

18 (2) The sale or transfer of the real property would be at  
19 a price and upon terms that preserve the intent of  
20 this section without the necessity of the State  
21 repurchasing the real property; provided that, in this





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

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

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

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



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

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

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

19 provided that the mortgagee's failure to provide written notice  
20 to the corporation shall not affect the mortgage holder's rights  
21 under the mortgage. The corporation shall be a party to any



1 foreclosure action, and shall be entitled to its share of  
2 appreciation in the real property as determined under this  
3 chapter in lien priority when the payment is applicable, and if  
4 foreclosure occurs within the ten-year period after the  
5 purchase, the corporation shall also be entitled to all proceeds  
6 remaining in excess of all customary and actual costs and  
7 expenses of transfer pursuant to default, including liens and  
8 encumbrances of record; provided that the person in default  
9 shall be entitled to an amount that shall not exceed the sum of  
10 amounts determined pursuant to subsection (a)(1)(B) and (C).

11 (g) 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 In any sale in which the corporation's share of appreciation in



1 real property is a restriction, the terms of the shared  
2 appreciation equity program shall be clearly stated and included  
3 as an exhibit in any deed, lease, agreement of sale, or any  
4 other instrument of conveyance.

5 (h) 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 (i) 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 (j) Notwithstanding any law to the contrary, if real  
17 property is purchased by a qualified nonprofit housing trust  
18 pursuant to subsection (b), the housing trust shall establish  
19 new buyback restrictions for the purpose of maintaining the unit  
20 as affordable for as long as practicable, or as otherwise  
21 required by the corporation.



1 (k) A qualified nonprofit housing trust shall report the  
2 status and use of its housing units to the corporation by  
3 November 30 of each calendar year.

4 (l) This section shall not apply to any transfers of  
5 Hawaiian home lands under the Hawaiian Homes Commission Act, of  
6 1920, as amended."

7 SECTION 2. New statutory material is underscored.

8 SECTION 3. This Act shall take effect on July 1, 3000;  
9 provided that the amendments made to section 201H-47, Hawaii  
10 Revised Statutes, by section 1 of this Act shall not be repealed  
11 when that section is reenacted on June 30, 2028, pursuant to  
12 section 5 of Act 92, Session Laws of Hawaii 2023.



**Report Title:**

Housing Development Programs; HHFDC; Restrictions on Transfer;  
Hawaiian Home Lands; Exception

**Description:**

Exempts transfers of Hawaiian Home Lands from transfer  
restrictions for real property under housing development  
programs of the Hawaii Housing Finance and Development  
Corporation. Effective 7/1/3000. (HD1)

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