

ACT 302

A Bill for an Act Relating to Housing.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Subpart IIC of Chapter 201E, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§201E- Corporation’s right to repurchase or rent unit; authority to seek recovery.** (a) Notwithstanding any provisions to the contrary, during the period in which the restrictions in sections 221 and 222 are in effect, the following provisions shall apply when dwelling units developed, constructed, financed, purchased, or sold pursuant to Act 105, Session Laws of Hawaii 1970, as amended, are found to have a substantial construction defect:

- (1) The corporation shall have the right, but not the obligation, to repurchase a dwelling unit which has a construction defect, regardless or whether or not the owner wishes to sell, provided that such repurchases shall be in accordance with the following provisions:
  - (A) The corporation may repurchase a dwelling unit if:
    - (i) The dwelling unit is deemed unsafe by the county building department; or
    - (ii) The defects are irreparable; or
    - (iii) In the opinion of the corporation, the defect is of such magnitude that it will take longer than a year to repair.
  - (B) The corporation’s purchase price shall be based on the formula set forth in paragraph 221 (a)(1);
  - (C) After repairs to the unit are completed, the former owner shall have the first right of refusal to repurchase the unit;
  - (D) The corporation shall give preference in all other projects of the corporation to all owners whose units are repurchased by the corporation under this subsection, and the corporation may waive certain eligibility requirements for these owners; and
  - (E) If the corporation exercises its right to purchase a defective unit against an owner’s wishes pursuant to this paragraph, the corporation shall provide relocation assistance to that owner as provided in chapter 111;
- (2) If the corporation does not opt to purchase a dwelling unit which has a construction defect, the corporation shall also have the right, but not the obligation, to enter into a contract to repair a dwelling unit which has a construction defect. During the period that the unit is being repaired, the corporation shall rent that unit from the owner for an amount not to exceed the owner’s present mortgage payments; and
- (3) If the corporation does not execute either a contract to repurchase the dwelling unit or an agreement to repair and rent the unit within ninety days after written notice is given to the corporation of a construction defect, the owner may pursue any other available legal remedies.

For the purposes of this subsection, “substantial construction defect” includes but is not necessarily limited to: structural defects such as shifting foundations

and bearing walls; structural deficiencies due to the use of defective or undersized materials; and defects affecting the health and safety of occupants.

(b) If moneys are expended by the corporation pursuant to paragraphs (a)(1) and (a)(2), the corporation shall have the authority to take necessary legal action against the developer, co-developer, general contractor, and their subcontractors, consultants, and other parties notwithstanding any provisions to the contrary in chapter 657.

(c) If dwelling units developed, constructed, financed, purchased, or sold pursuant to Act 105, Session Laws of Hawaii 1970, as amended, are found to have a substantial construction defect, the corporation shall have the right, but not the obligation, to file a legal action on behalf of the owner or lessee of the dwelling unit for the recovery of damages or for injunctive relief against the developer, co-developer, general contractor, and their subcontractors, consultants, and other parties notwithstanding any provisions to the contrary in chapter 657.

(d) Nothing in this chapter shall be construed so as to diminish the rights or remedies of the corporation otherwise provided under common law, by statute or by contract.

(e) The corporation shall adopt rules pursuant to chapter 91 necessary for the purposes of this section.

(f) If any subsection, sentence, clause or phrase of this section, or its application to any person or transaction or other circumstances, is for any reason held to be unconstitutional or invalid, the remaining subsections, sentences, clauses, and phrases of this section, or the application of this section to other persons or transactions or circumstances, shall not be affected. The legislature hereby declares that it would have passed this section and each subsection, clause, or phrase thereof, irrespective of the fact that any one or more subsections, sentences, clauses, or phrases of this section, or its application to any person or transaction or other circumstance, be declared unconstitutional or invalid.”

SECTION 2. New statutory material is underscored.<sup>1</sup>

SECTION 3. This Act, upon its approval, shall take effect retroactive to June 19, 1970 and shall apply to all dwelling units developed, constructed, financed, purchased or sold pursuant to Act 105, Session Laws of Hawaii 1970, as amended.

(Approved June 13, 1988.)

**Note**

1. Edited pursuant to HRS §23G-16.5.