

ACT 294

S.B. NO. 1360

A Bill for an Act Relating to Housing.

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

SECTION 1. Section 201E-62, Hawaii Revised Statutes, is amended to read as follows:

“§201E-62 Rules; eligible borrower. (a) The corporation shall establish the qualifications of the eligible borrower, and may consider, but not be limited to the following:

- (1) The proportion of income spent for shelter;
- (2) Size of the family;
- (3) Cost and condition of housing available to the total housing market; and
- (4) Ability of the person to compete successfully in the normal housing market and to pay the amounts on which private enterprise is providing loans for safe, decent, and sanitary housing in the State.

(b) The [adjusted household] family income of an eligible borrower shall not exceed the income requirements of section 143 (f) of the Internal Revenue Code of 1986, as amended. [amount established by the corporation pursuant to this section. For an eligible borrower with a family of four persons, the amount shall be equal to one hundred seventy-two and one-half per cent of the median annual income for households of four persons in the State as published by the United States Department of Health and Human Services in November 1980; provided that the amount may be increased by four per cent for each one-half per cent that the annual interest rate on the eligible loan exceeds ten per cent. For an eligible borrower with a family of other than four persons, the amount computed above for a family of four persons shall be adjusted in accordance with rules adopted by the corporation. As used in this subsection, “adjusted household income” means the total income, before taxes and personal deductions, received by all members of the eligible borrower’s household, including, but not limited to, wages, social security payments, retirement benefits, unemployment benefits, welfare benefits, interest and dividend payments, and such other income as provided by rules adopted by the corporation under chapter 91, but not including business deductions and income received by dependent members of an eligible borrower’s household.]

(c) [The assets of an eligible borrower shall not exceed an annual amount equal to the adjusted household income for an eligible borrower as set forth in subsection (b). As used in this section, assets include, but are not limited to, all cash, securities, and real and personal property, less any outstanding liabilities secured by such assets and less twenty-five per cent of a downpayment required for the purchase of property financed by an eligible loan. For purposes of this section, the value of a vacant lot owned by an eligible borrower shall not be included as an asset when a dwelling unit is or shall be constructed on the property and financed by an eligible loan.

(d)] For the purpose of determining the qualification of an eligible borrower for an eligible improvement loan:

- (1) The housing unit for which the eligible improvement loan is to be made and the property on which the housing unit is situated shall not be included in the calculation of the eligible borrower's assets; and
- (2) The mortgage secured by the housing unit and property shall not be included in the calculation of the eligible borrower's liabilities.
- (e)¹ (d) For the purpose of determining the qualification of an eligible borrower for an eligible loan for a targeted area residence:
 - (1) The housing unit being replaced and the property on which the housing unit is situated shall not be included in the calculation of the eligible borrower's assets; and
 - (2) The mortgage secured by the housing unit and the property shall not be included in the calculation of the eligible borrower's liabilities."

SECTION 2. Section 201E-221, Hawaii Revised Statutes, is amended to read as follows:

"§201E-221 Dwelling units; restrictions on transfer, waiver or restrictions. (a) Except for dwelling units which are financed under a federally subsidized mortgage program, the following restrictions shall apply to the transfer of dwelling units purchased from the corporation, whether on fee simple or leasehold property:

- (1) For a period of ten years after the purchase, whether by lease, assignment of lease, deed, or agreement of sale, if the purchaser wishes to transfer title to the dwelling unit and the property or the lease, the corporation shall have the first option to purchase the unit and property or lease at a price which shall not exceed the sum of:
 - (A) The original cost to the purchaser;
 - (B) The cost of any improvements added by the purchaser; and
 - (C) Simple interest on the purchaser's equity in the property at the rate of seven per cent a year.

The corporation may purchase the unit either outright, free and clear of all liens and encumbrances, or by transfer subject to an existing mortgage.

If by outright purchase, the corporation shall insure that all existing mortgages, liens, and encumbrances are satisfactorily paid by the purchaser.

In any purchase by transfer subject to an existing mortgage, the corporation shall agree to assume and to pay the balance on any first mortgage created for the purpose of enabling the purchaser to obtain funds for the purchase of the unit and any other mortgages which were created with the approval and consent of the corporation. In such cases, the amount to be paid to the purchaser by the corporation shall be the difference between the above-mentioned price and the principal balance of all mortgages outstanding and assumed at the time of transfer of title to the corporation.

- (2) After the end of the tenth year from the date of purchase, or execution of an agreement of sale, the purchaser may sell the unit and sell or assign the property to any person free from any price restrictions; provided that the purchaser shall be required to pay to the corporation the sum of:
 - (A) The balance of any mortgage note, agreement of sale, or other amount owing to the corporation;
 - (B) Any subsidy made by the corporation in the acquisition, development, construction, and sale of the unit, and any other amount expended by the corporation not counted as cost under section

201E-220 but charged to the dwelling unit by good accounting practice as determined by the corporation whose books shall be prima facie evidence of the correctness of the costs; and

- (C) Interest on the subsidy and any other amount expended at the rate of seven per cent a year computed as to the subsidy, from the date of purchase, or execution of the agreement of sale, and as to any amount expended, from the date of expenditure; provided that the computed interest shall not extend beyond thirty years from the date of purchase, or execution of agreement of sale, of the unit; and provided that if any proposed sale or transfer will not generate an amount sufficient to pay the corporation the sum as computed under this paragraph, the corporation shall have the first option to purchase the dwelling unit at a price which shall not exceed the sum as computed under paragraph (1).

- (3) Notwithstanding any provision above to the contrary, pursuant to rules adopted by the corporation, the subsidy described in subsection (a)(2)(B) and any interest accrued pursuant to subsection (a)(2)(C) may be paid at any time.

- (b) The restrictions prescribed in subsection (a) may be waived if:

- (1) The purchaser wishes to transfer title to the dwelling unit and the property or lease by devise or through the laws of descent to a family member who would otherwise qualify under rules established by the corporation; or
- (2) The corporation determines, in accordance with adopted rules, that the sale or transfer of a dwelling unit would be at a price and upon terms that preserves the intent of this section without the necessity of the State to repurchase the unit.

(c) The restrictions prescribed in subsection (a) shall be automatically extinguished and shall not attach in subsequent transfers of title when a mortgage holder or other party becomes the owner of the dwelling unit and the land or leasehold interest pursuant to a mortgage foreclosure, foreclosure under power of sale, or a conveyance in lieu of foreclosure after a foreclosure action is commenced. Any law to the contrary notwithstanding, a mortgagee under a mortgage covering a dwelling unit and land or leasehold interest encumbered by the first option to purchase in favor of the corporation, prior to commencing mortgage foreclosure proceedings, shall notify the corporation of (1) any default of the mortgagor under the mortgage within ninety days after the occurrence of the default, and (2) any intention of the mortgagee to foreclose the mortgage under chapter 667. The corporation shall be a party to any foreclosure action, and shall be entitled to all proceeds remaining in excess of all customary and actual costs and expenses of transfer pursuant to default, including liens and encumbrances of record; provided that the person in default shall be entitled to an amount which shall not exceed the sum of amounts determined pursuant to subsection (a)(1)(B) and (C) and the purchaser's equity in the property.

(d) The provisions of this section shall be incorporated in any deed, lease, mortgage, agreement of sale, or any other instrument of conveyance issued by the corporation. In any sale by the corporation of a dwelling unit for which a subsidy was made by the corporation, the amount of the subsidy described in subsection (a)(2)(B), a description of the cost items which constitute the subsidy, and the conditions of the subsidy shall be clearly stated at the beginning of the contract document issued by the corporation.

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

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SECTION 4. This Act shall take effect upon its approval; provided that Section 2 shall take effect retroactive to June 19, 1970, the date of approval of Act 105, Session Laws of Hawaii 1970, and shall apply to all purchasers of dwelling units sold pursuant to Act 105, Session Laws of Hawaii, 1970, as amended.

(Approved June 13, 1989.)

Note

1. So in original.