

ACT 65

H.B. NO. 2328

A Bill for an Act Relating to Housing.

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

SECTION 1. Section 201H-47, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) The following restrictions shall apply to the transfer of real property developed and sold under this chapter, whether in fee simple or leasehold:

- (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 real property, the corporation shall have the first option to purchase the real property at a price that shall not exceed the sum of:
  - (A) The original cost to the purchaser, as defined in rules adopted by the corporation;
  - (B) The cost of any improvements added by the purchaser, as defined in rules adopted by the corporation;
  - (C) Simple interest on the original cost and capital improvements to the purchaser at the rate of one per cent [a] per year; and
  - (D) ~~[The corporation's share of net appreciation in the real property, as determined under rules adopted pursuant to chapter 91, when applicable.]~~ The amount, if any, previously paid by

the purchaser to the corporation as the corporation's share of net appreciation in the real property;

- (2) The corporation may purchase the real property either:
- (A) By conveyance free and clear of all mortgages and liens; or
  - (B) By conveyance subject to existing mortgages and liens.
- If the real property is conveyed in the manner provided in subparagraph (A), it shall be conveyed to the corporation only after all mortgages and liens are released. If the real property is conveyed in the manner provided in subparagraph (B), the corporation shall acquire the real property subject to any first mortgage created for the purpose of securing the payment of a loan of funds expended solely for the purchase of the real property by the seller; and any mortgage or lien created for any other purpose; provided that the corporation has previously consented to it in writing.

The corporation's interest created by this section shall constitute a statutory lien on the real property and shall be superior to any other mortgage or lien, except for[:

- (i) ~~Any~~ any first mortgage created for the purpose of securing the payment of a loan of funds expended solely for the purchase of the real property by the seller;
- (ii) ~~Any~~ any mortgage insured or held by a federal housing agency; and
- (iii) ~~Any~~ any mortgage or lien created for any other purpose; provided that the corporation has previously consented to it in writing.

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

- (3) A purchaser may refinance real property developed and sold under this chapter; provided that the purchaser shall not refinance the real property within ten years from the date of purchase for an amount in excess of the purchase price as determined by paragraph (1)(A) to (C); provided further that the purchaser shall obtain the corporation's written consent if any restriction on the transfer of the real property remains applicable;
- (4) After the end of the tenth year from the date of initial purchase or execution of an agreement of sale, the purchaser may sell the real property and sell or assign the property 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 or deferred sales price made by the corporation in the acquisition, development, construction, and sale of the real property, and any other amount expended by the corporation not counted as costs under section 201H-45 but charged to the real property by good accounting practice as determined by the corporation whose books shall be prima facie evidence of the correctness of the costs;
  - (C) Interest on the subsidy or deferred sales price, if applicable, and any other amount expended at the rate of seven per cent [a] per year computed as to the subsidy or deferred sales price, if applicable, 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 the agreement of sale of the real property. 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 real property at a price that shall not exceed the sum as computed under paragraphs (1) and (2); and

- (D) The corporation's share of appreciation in the real property as determined under rules adopted pursuant to chapter 91, when applicable;
- (5) Notwithstanding any provision in this section to the contrary, pursuant to rules adopted by the corporation, the subsidy or deferred sales price described in paragraph (4)(B) and any interest accrued pursuant to paragraph (4)(C) may be paid, in part or in full, at any time; and
- (6) Notwithstanding any provision in this section to the contrary, the corporation's share of appreciation in the real property described in paragraph (4)(D):
  - (A) Shall apply when the sales price of the real property that is developed and sold under this chapter is less than the then-current, unencumbered, fair market value of the real property, as determined by a real property appraisal obtained prior to the closing of the sale;
  - (B) Shall be a restriction that runs with the land until it is paid in full and released by the corporation, or extinguished pursuant to subsection (f); and
  - (C) May be paid, in part or in full, at any time after recordation of the sale.

(b) If the corporation waives its first option to repurchase the real property provided in subsection (a), a qualified nonprofit housing trust shall have the option to purchase the real property at ~~[the price and in the manner set forth in subsection (a)]~~ a price that shall not exceed the sum of:

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

SECTION 2. Act 159, Session Laws of Hawaii 2017, is amended by amending section 8 to read as follows:

~~"SECTION 8. [This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.] This Act shall not affect rights, duties, and obligations that have matured through a signed contract or disclosure by way of a preliminary offering statement filed with the real estate commission before its effective date."~~

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

SECTION 4. This Act shall take effect upon its approval.

(Approved June 29, 2018.)