



GOV. MSG. NO. 651

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

April 30, 2009

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fifth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

This is to inform you that on April 30, 2009, the following bill was signed into law:

SB862 SD2

A BILL FOR AN ACT
RELATING TO HOUSING.
ACT 038 (09)

Sincerely,



LINDA LINGLE

A BILL FOR AN ACT

RELATING TO HOUSING.

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

1 SECTION 1. The purpose of this Act is to facilitate the
2 collection of the shared appreciation equity lien, deferred
3 sales price lien, and excess proceeds in lieu of any buyback,
4 imposed by the State on the sale of affordable housing
5 properties that received assistance from the Hawaii housing
6 finance and development corporation, which are undergoing
7 foreclosure.

8 SECTION 2. Section 201H-47, Hawaii Revised Statutes, is
9 amended as follows:

10 1. By amending subsection (a) to read:

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

14 (1) For a period of ten years after the purchase, whether
15 by lease, assignment of lease, deed, or agreement of
16 sale, if the purchaser wishes to transfer title to the
17 real property, the corporation shall have the first



1 option to purchase the real property at a price that
2 shall not exceed the sum of:

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

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

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

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

12 (A) By conveyance free and clear of all mortgages and
13 liens; or

14 (B) By conveyance subject to existing mortgages and
15 liens.

16 If the real property is conveyed in the manner
17 provided in subparagraph (A), it shall be conveyed to
18 the corporation only after all mortgages and liens are
19 released. If the real property is conveyed in the
20 manner provided in subparagraph (B), the corporation
21 shall acquire the property subject to any first
22 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 ~~[paragraph]~~ section shall constitute a statutory lien
8 on the real property and shall be superior to any
9 other mortgage or lien except for:

10 (i) Any first mortgage created for the purpose
11 of securing the payment of a loan of funds
12 expended solely for the purchase of the real
13 property by the seller;

14 (ii) Any mortgage insured or held by a federal
15 housing agency; and

16 (iii) Any mortgage or lien created for any other
17 purpose; provided that the corporation has
18 previously consented to it in writing.

19 The amount paid by the corporation to the seller shall
20 be the difference, if any, between the purchase price
21 determined by paragraph (1) (A) to (C), and the total



1 of the outstanding principal balances of the mortgages
2 and liens assumed by the corporation;

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

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

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

20 (B) Any subsidy or deferred sales price made by the
21 corporation in the acquisition, development,
22 construction, and sale of the real property, and



1 any other amount expended by the corporation not
2 counted as costs under section 201H-45 but
3 charged to the real property by good accounting
4 practice as determined by the corporation whose
5 books shall be prima facie evidence of the
6 correctness of the costs;

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

6 (5) Notwithstanding any provision [~~above~~] in this section
7 to the 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 (e); and

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

7 2. By amending subsection (c) to read:

8 "(c) The corporation may waive the restrictions prescribed
 9 in subsection (a) or (b) if:

10 (1) The purchaser wishes to transfer title to the real
 11 property by devise or through the laws of descent to a
 12 family member who would otherwise qualify under rules
 13 established by the corporation;

14 (2) The sale or transfer of the real property would be at
 15 a price and upon terms that preserve the intent of
 16 this section without the necessity of the State
 17 repurchasing the real property; provided that, in this
 18 case, the purchaser shall sell the ~~[unit or lot]~~ real
 19 property and sell or assign the real property to a
 20 person who is a "qualified resident" as defined in
 21 section 201H-32; and provided further that the
 22 purchaser shall pay to the corporation its share of



1 appreciation in the [~~unit~~] real property as determined
2 in rules adopted pursuant to chapter 91, when
3 applicable; or

4 (3) The sale or transfer is of real property subject to a
5 sustainable affordable lease as defined in section
6 516-1."

7 3. By amending subsections (e) and (f) to read:

8 "(e) The restrictions prescribed in this section and
9 sections 201H-49 to 201H-51 shall be automatically extinguished
10 and shall not attach in subsequent transfers of title when a
11 mortgage holder or other party becomes the owner of the real
12 property pursuant to a mortgage foreclosure, foreclosure under
13 power of sale, or a conveyance in lieu of foreclosure after a
14 foreclosure action is commenced; provided that the mortgage is
15 the initial purchase money mortgage, or that the corporation
16 consented to and agreed to subordinate the restrictions to the
17 mortgage when originated, if the mortgage is not the initial
18 purchase money mortgage; or when a mortgage is assigned to a
19 federal housing agency. Any law to the contrary
20 notwithstanding, a mortgagee under a mortgage covering real
21 property or leasehold interest encumbered by the first option to
22 purchase in favor of the corporation, prior to commencing



1 mortgage foreclosure proceedings, shall notify the corporation
2 in writing of:

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

5 (2) Any intention of the mortgagee to foreclose the
6 mortgage under chapter 667[+] forty-five days prior to
7 commencing mortgage foreclosure proceedings;

8 provided that the mortgagee's failure to provide written notice
9 to the corporation shall not affect the mortgage holder's rights
10 under the mortgage. The corporation shall be a party to any
11 foreclosure action, and shall be entitled to its share of
12 appreciation in the real property as determined under this
13 chapter in lien priority when the payment is applicable, and if
14 foreclosure occurs within the ten-year period after the
15 purchase, the corporation shall also be entitled to all proceeds
16 remaining in excess of all customary and actual costs and
17 expenses of transfer pursuant to default, including liens and
18 encumbrances of record; provided that the person in default
19 shall be entitled to an amount [which] that shall not exceed the
20 sum of amounts determined pursuant to subsection (a)(1)(B) and
21 (C).



1 (f) The provisions of this section shall be incorporated
2 in any deed, lease, agreement of sale, or any other instrument
3 of conveyance issued by the corporation. In any sale by the
4 corporation of real property for which a subsidy or deferred
5 sales price was made by the corporation, the amount of the
6 subsidy or deferred sales price described in subsection
7 (a) (4) (B), a description of the cost items that constitute the
8 subsidy or deferred sales price, and the conditions of the
9 subsidy or deferred sales price shall be clearly stated at the
10 beginning of the contract document issued by the corporation.
11 In any sale in which the corporation's share of appreciation in
12 real property is a restriction, the terms of the shared
13 appreciation equity program shall be clearly stated and included
14 as an exhibit in any deed, lease, agreement of sale, or any
15 other instrument of conveyance."

16 SECTION 3. Section 201H-50, Hawaii Revised Statutes, is
17 amended by amending subsection (a) to read as follows:

18 "(a) Restrictions on the use, sale, and transfer of real
19 property shall be made as uniform as possible in application to
20 purchasers of all real property, and restrictions shall be
21 conformed with agreement of the purchaser to reflect change or
22 repeal made by any subsequent legislative act, ordinance, rule,



1 or regulation. Purchasers shall be permitted at their election
2 to sell or transfer real property subject to restrictions in
3 effect at the time of their sale or transfer~~[-]~~; provided that
4 the corporation is paid its share of appreciation in the real
5 property as determined by rules adopted pursuant to chapter 91,
6 as applicable."

7 SECTION 4. Statutory material to be repealed is bracketed
8 and stricken. New statutory material is underscored.

9 SECTION 5. This Act shall take effect upon its approval.

APPROVED this 30 day of APR, 2009



GOVERNOR OF THE STATE OF HAWAII