

JAN 26 2009

S.B. NO. 862

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 to read as follows:

10 "**§201H-47 Real property; restrictions on transfer; waiver**
11 **of restrictions.** (a) The following restrictions shall apply to
12 the transfer of real property developed and sold under this
13 chapter, 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 while any
10 restriction on transfer established in this chapter
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 to the contrary,
7 pursuant to rules adopted by the corporation, the
8 subsidy or deferred sales price described in paragraph
9 (4) (B) and any interest accrued pursuant to paragraph
10 (4) (C) may be paid, in part or in full, at any
11 time [~~-~~]; and

12 (6) Notwithstanding any provision above to the contrary,
13 the corporation's share of appreciation in the real
14 property described in paragraph(4) (D):

15 (A) Shall apply when the sale price of the real
16 property that is developed and initially sold
17 under this 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) Is a restriction that runs with the land until it
2 is paid in full and released by the corporation,
3 or extinguished pursuant to subsection (e); and
4 (C) May be paid, in part or in full, at any time
5 after recordation of the sale.

6 (b) For a period of ten years after the purchase, whether
7 by lease, assignment of lease, deed, or agreement of sale, if
8 the purchaser wishes to transfer title to the real property, and
9 if the corporation does not exercise the option to purchase the
10 real property as provided in subsection (a), then the
11 corporation shall require the purchaser to sell the real
12 property to a "qualified resident" as defined in section 201H-
13 32, and upon the terms that preserve the intent of this section
14 and sections 201H-49 and 201H-50, and in accordance with rules
15 adopted by the corporation.

16 (c) The corporation may waive the restrictions prescribed
17 in subsection (a) or (b) if:

- 18 (1) The purchaser wishes to transfer title to the real
19 property by devise or through the laws of descent to a
20 family member who would otherwise qualify under rules
21 established by the corporation;

1 (2) The sale or transfer of the real property would be at
2 a price and upon terms that preserve the intent of
3 this section without the necessity of the State
4 repurchasing the real property; provided that, in this
5 case, the purchaser shall sell the [~~unit or lot~~] real
6 property and sell or assign the real property to a
7 person who is a "qualified resident" as defined in
8 section 201H-32; and provided further that the
9 purchaser shall pay to the corporation its share of
10 appreciation in the [~~unit~~] real property as determined
11 in rules adopted pursuant to chapter 91, when
12 applicable; or

13 (3) The sale or transfer is of real property subject to a
14 sustainable affordable lease as defined in section
15 516-1.

16 (d) The corporation may release the restrictions
17 prescribed in subsection (a) or (b) if the real property is
18 financed under a federally subsidized mortgage program and the
19 restrictions would jeopardize the federal government's ability
20 to recapture any interest credit subsidies provided to the
21 homeowner.

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

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

20 (2) Any intention of the mortgagee to foreclose the
21 mortgage under chapter 667; forty-five days prior to
22 commencing mortgage foreclosure proceedings;

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

15 (f) The provisions of this section shall be incorporated
16 in any deed, lease, agreement of sale, or any other instrument
17 of conveyance issued by the corporation. In any sale by the
18 corporation of real property for which a subsidy or deferred
19 sales price was made by the corporation, the amount of the
20 subsidy or deferred sales price described in subsection
21 (a)(4)(B), a description of the cost items that constitute the
22 subsidy or deferred sales price, and the conditions of the

1 subsidy or deferred sales price shall be clearly stated at the
2 beginning of the contract document issued by the corporation.
3 In any sale in which the corporation's share of appreciation in
4 real property shall be a restriction, the terms of the shared
5 appreciation equity program shall be clearly stated and included
6 as an exhibit in any deed, lease, agreement of sale, or any
7 other instrument of conveyance.

8 (g) This section need not apply to market-priced units in
9 an economically integrated housing project, except as otherwise
10 determined by the developer of the units; provided that
11 preference shall be given to qualified residents in the initial
12 sale of market-priced units.

13 (h) The corporation is authorized to waive any of the
14 restrictions set forth in this section in order to comply with
15 or conform to requirements set forth in federal law or
16 regulations governing mortgage insurance or guarantee programs
17 or requirements set forth by federally chartered secondary
18 mortgage market participants."

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

21 "(a) Restrictions on the use, sale, and transfer of real
22 property shall be made as uniform as possible in application to

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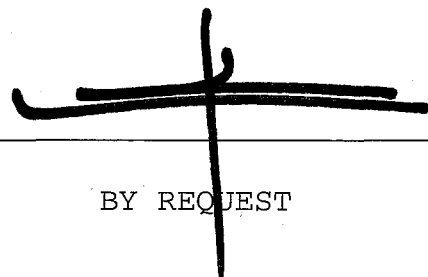
1 purchasers of all real property, and restrictions shall be
 2 conformed with agreement of the purchaser to reflect change or
 3 repeal made by any subsequent legislative act, ordinance, rule,
 4 or regulation. Purchasers shall be permitted at their election
 5 to sell or transfer real property subject to restrictions in
 6 effect at the time of their sale or transfer[-], provided that
 7 the corporation is paid its share of appreciation in the real
 8 property as determined by rules adopted pursuant to chapter 91,
 9 as applicable."

10 SECTION 4. Statutory material to be repealed is bracketed
 11 and stricken. New statutory material is underscored.

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

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 14
 15

INTRODUCED BY: _____



BY REQUEST

Report Title:

Housing

Description:

Enables the Hawaii housing finance and development corporation to more easily collect the value of shared appreciation equity and other restrictions when an affordable housing property is publicly sold through a foreclosure. Requires written notification of intent to foreclose on properties encumbered by such priority liens.

SB 862

JUSTIFICATION SHEET

DEPARTMENT: Business, Economic Development and Tourism

TITLE: A BILL FOR AN ACT RELATING TO HOUSING.

PURPOSE: To enable the Hawaii housing finance and development corporation (HHFDC) to more easily collect the value of shared appreciation equity and other restrictions when an affordable housing property is sold and to require advance written notification to the HHFDC of intent to foreclose on properties encumbered by such priority liens.

MEANS: Amend sections 201H-47 and 201H-50(a), Hawaii Revised Statutes.

JUSTIFICATION: The sale of affordable housing properties sponsored or assisted by the HHFDC is subject to a buyback restriction and a shared appreciation equity (SAE) lien. The HHFDC has also provided deferred sales price liens to assist low or moderate income homebuyers in purchasing a first home.

The HHFDC has experienced difficulties in not receiving sufficient prior notice of foreclosure proceedings on such HHFDC-assisted properties, especially as mortgages of such properties are foreclosed upon, purchased and consolidated with large national mortgage companies that do not have experience with affordable properties in Hawaii. The HHFDC has not had the advance notice needed to prepare to bid at foreclosure sales of government-assisted properties, when it would be appropriate and beneficial to do so.

This measure would afford the HHFDC with notice of intent to foreclose forty-five days before commencement of the foreclosure. This notice period will allow HHFDC sufficient time to decide whether bidding at

the foreclosure sale makes sense under the circumstances.

Additionally, because SAE or other government entity liens are priority liens (following the purchase money mortgage), the mortgagee pursuing the foreclosure must satisfy the amount due to the HHFDC before claiming the property at the auction. The HHFDC has had to intervene in foreclosure actions and litigate to assert its rights as a priority lien holder, which incurs substantial litigation costs. This measure clarifies that the HHFDC agency lien is a priority lien.

Impact on the public: Will enhance HHFDC's collection efforts thereby providing it with additional resources for interim construction loans for other affordable housing development.

Impact on the department and other agencies:
None.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: BED 160.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: Upon approval.